

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF SOUTH BEND,)	Cause No. 3:12cv475
)	
Plaintiff,)	
)	
vs.)	
)	
SOUTH BEND COMMON COUNCIL,)	South Bend, Indiana
et al.,)	August 12, 2014
)	11:15 a.m.
Defendants.)	
_____)	_____
)	
BRIAN YOUNG, SANDY YOUNG,)	
TIMOTHY CORBETT, DAVID)	
WELLS, and STEVE RICHMOND,)	
)	
Plaintiffs,)	
)	Consolidated Case No.:
vs.)	3:12cv532
)	
THE CITY OF SOUTH BEND,)	
Acting Through its Police)	
Department, DARRYL BOYKINS,)	
Individually and in his)	
Official Capacity as Chief)	
of Police, KAREN DEPAEPE,)	
and SCOTT DUERRING,)	
)	
Defendants.)	
_____)	

VOLUME I
TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE JOSEPH S. VAN BOKKELEN

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1 THE COURT: You can all be seated.

2 From time to time, I'll probably be fiddling around
3 up here. It's not my courtroom. Judge DeGuilio has been very
4 kind to let me mess up his desk and everything. I will
5 probably do that by the time we're done.

6 We're scheduled today for a bench trial in Cause
7 Number 3:12cv475, *City of South Bend v. The South Bend Common*
8 *Council*, and, also, the police defendants.

9 It's set for three days. I'm hoping we don't go
10 anything close to three days. I'm going to push a little bit
11 later into the night tonight and I'll do the same thing
12 tomorrow, if necessary.

13 As to scheduling, I hope you aren't planning for a
14 big lunch, because there won't be a big lunch. It will be a
15 short lunch, because I want to keep pushing through throughout
16 the course of the day.

17 First, for the record, would counsel for the City of
18 South Bend introduce themselves.

19 MR. SULLIVAN: Good morning, Your Honor. I'm Ed
20 Sullivan with Faegre Baker Daniels representing the City of
21 South Bend, and this is my colleague (indicating).

22 MR. MILLIGAN: Ryan Milligan.

23 MR. SULLIVAN: We're here with the City attorney,
24 Cristal Brisco.

25 THE COURT: Okay. And who else?

1 MR. SULLIVAN: Also from my office is paralegal Liz
2 White Legg.

3 THE COURT: Okay. Thank you.

4 And for Defendant South Bend Common Council?

5 MR. WALTON: Your Honor, Spence Walton from May
6 Oberfell Lorber, and Bob Palmer from May Oberfell Lorber, and
7 Cathy Cekanski-Farrand, who is in the back of the courtroom, is
8 counsel for the Council.

9 THE COURT: Okay. And for the defendant police
10 officers?

11 MR. PFEIFER: Dan Pfeifer of the firm Pfeifer Morgan
12 & Stesiak; Jeff McQuary and Jerry McKeever from my office,
13 also, and then the individual defendants are here.

14 THE COURT: Before we start, it was indicated that,
15 with regard to the 532 case, which is not before me -- it's
16 only the declaratory judgment action -- that case has been
17 settled; is that correct?

18 MR. PFEIFER: The differences have been resolved,
19 and we're in the process of completing execution of the
20 necessary documents. In fact, late last night, I signed a
21 document that's been forwarded to Mari Duerring, so 532 is
22 resolved.

23 +THE COURT: Okay. Again, I know you talked to my
24 law clerk, Vilius Lapas. On the case in controversy, we're
25 probably at the edge a little bit, at least for this Court. My

1 understanding is that all the parties wanted this hearing to
2 proceed forward.

3 Is that correct, for the plaintiff?

4 MR. SULLIVAN: Yes, that's correct, Your Honor.

5 THE COURT: Defendant Council?

6 MR. WALTON: Yes, Your Honor.

7 THE COURT: And the police officers?

8 MR. PFEIFER: Yes, Your Honor.

9 THE COURT: The reason I'm referring to you as the
10 "police officers," that's who they are. I know some of them,
11 as a matter of fact, from my older days as U.S. Attorney.

12 The way I plan to start, it will -- obviously, the
13 complaint was filed for declaratory judgment action -- start
14 with the City. Really, as far as rulings, I will take a lot of
15 them under advisement.

16 A judge who was a very good friend of mine, as a
17 matter of fact, I spent most of my legal life around, Judge
18 Sharp, in one form or another, sometimes nice and sometimes not
19 so good, he always said he can separate the wheat from the
20 chaff. I'm not sure I do that as well as he did it, but I can
21 do it, so I will take a lot of the objections under advisement.
22 Make your objections where you think need to be made. You
23 don't have to go into detail about them.

24 I have read all your briefs. They are very good
25 briefs. They are very helpful. What I want to do the next few

1 days is just get all the evidence in so we can do the briefing
2 work that has to be done and so forth. So make your objections
3 where you think it's necessary. Understand this is a bench
4 trial and I can separate most of the stuff. And at the time we
5 do the briefing and so forth, where you think evidence is being
6 considered that should have been inadmissible, then I can take
7 it up at that time.

8 MR. SULLIVAN: Very good, Your Honor.

9 THE COURT: Any questions?

10 Are the parties ready to proceed?

11 MR. SULLIVAN: Yes. There's a few preliminary
12 matters that I might raise with the Court, Your Honor.

13 THE COURT: Okay.

14 MR. SULLIVAN: First of all, we would ask for a
15 separation of witness order.

16 THE COURT: Okay. I don't know your witnesses.
17 That motion will be granted. Anybody who is a witness, just
18 let them be excused from the courtroom, and you have to track
19 your own witnesses, because I don't know who your witnesses
20 are.

21 MR. SULLIVAN: I have two witnesses that are here,
22 Your Honor, that I would ask to step out in the hall and then
23 we'll come and get you when it's time.

24 THE COURT: Are there any witnesses here that the
25 parties know to be witnesses? I assume that's it.

1 MR. SULLIVAN: In addition, Your Honor, I guess I
2 just did want to ask what time you plan to have the very brief
3 lunch break so that we could plan for other witnesses to come.

4 THE COURT: I want to get at least two hours into
5 the case, if we could. Of course, that's kind of a fluid
6 number, I guess, but I would like to get about that far into
7 the case if possible.

8 MR. SULLIVAN: We anticipated something like that,
9 Your Honor.

10 THE COURT: Any time you can't hear me, tell me. In
11 my courtroom in Hammond, if you chose to come over and try it
12 over there, I have a wireless so I don't worry so much about
13 getting away from the microphone. Here I've got to make sure
14 I'm talking into the microphone.

15 MR. SULLIVAN: We would have been happy to come to
16 Hammond, Your Honor.

17 THE COURT: I know you were.

18 MR. SULLIVAN: It's a beautiful courthouse there.

19 THE COURT: It is a nice courthouse.

20 MR. SULLIVAN: Your Honor, we do have a pending
21 motion that seeks to exclude any references in testimony or
22 exhibits to the content of the recordings at issue, and there
23 is a protective order that has been entered in this case from
24 very early on, so we would just ask that the Court extend that
25 protective order and instruct all counsel and all witnesses not

1 to make any references to the content of the recordings; and
2 then we would ask for a little leeway, if we need to sort of
3 jump in and hold a witness up if it looks like there's going to
4 be a reference to that. It certainly would moot the whole
5 issue that is at play here, Your Honor, and so we think --
6 we've submitted a brief on that and cited *U.S. v. Dorfman* for
7 the proposition that you're not going to disclose the very
8 subject of whether it's legal to disclose.

9 THE COURT: Mr. Walton?

10 MR. WALTON: Your Honor, we join in that motion.

11 MR. PFEIFER: We're in agreement.

12 THE COURT: Okay.

13 MR. SULLIVAN: Thank you, Your Honor.

14 THE COURT: So the protective order will be
15 continued.

16 MR. SULLIVAN: I'm sorry?

17 THE COURT: The protective order will be extended.

18 MR. SULLIVAN: Very good. Thank you.

19 We do have a couple of exhibits that have been
20 redacted pursuant to that protective order, so that's the ones
21 we'll use.

22 Your Honor, I would like to offer agreed exhibits to
23 be admitted into evidence, and I'd ask my co-counsel here from
24 the other parties to make sure I hit the right ones, so I'm
25 going to go through in our agreed exhibit binder, which has

1 been submitted to the Court, and mention the numbers of the
2 exhibits that are agreed and admitted -- moved to be admitted.
3 So it would be Exhibits 1, 5, 6, 7, 9, 12, 15, 16, 17, 18, 20,
4 21, 35, 36, 37, 38, 43, 44, 45, and 46.

5 Counsel, did I get those correctly?

6 MR. WALTON: Yes.

7 THE COURT: Is there any objection to that by
8 anybody?

9 MR. WALTON: No.

10 MR. PFEIFER: What about 47?

11 MR. SULLIVAN: I wasn't going to offer 47.

12 THE COURT: Exhibit Number 1, 5, 6, 7, 9, 12, 15,
13 16, 17, 18, 20, 21, 35, 36, 37, 38, 43, 44, 45, 46 are admitted
14 without objection.

15 MR. SULLIVAN: Thank you, Your Honor.

16 Then the final preliminary matter is that we have an
17 agreement to submit testimony by deposition from Barb Holleman,
18 who was the former secretary to the chief of police of the
19 South Bend Police Department, and we have some depositions that
20 we would like to offer at this time. Again, they're agreed,
21 comprehensive, and what all parties designated.

22 THE COURT: Is there any objection to that,
23 Mr. Walton?

24 MR. WALTON: No, Your Honor. I haven't seen it, but
25 I presume -- we agreed on numbers and we exchanged them. I

1 just haven't seen the finals.

2 THE COURT: Okay. Subject to that.

3 Police defendants?

4 MR. PFEIFER: No objection.

5 THE COURT: Okay.

6 MR. SULLIVAN: All right. Those are my preliminary
7 issues, Your Honor. I don't know if counsel has any other.

8 MR. WALTON: Just one.

9 For convenience -- and Mr. Sullivan and I talked
10 about it yesterday and I think he was going to talk to
11 Mr. Pfeifer -- once a witness is called, we agree that if we
12 have any use -- or rather than recall a witness in our own
13 cases, that we would go ahead and expand our scope of
14 cross-examination to get what information we want from the
15 witness when they're here.

16 THE COURT: The only thing I'd ask is when you go --
17 well, actually, it's a bench trial, so it's probably not that
18 big of a thing.

19 The only thing is, for the Court's benefit, to know
20 when you're moving beyond the scope of the examination of the
21 other party so I know that you've done that, if you remember to
22 tell me. Otherwise, I'll be up here just doodling along and
23 not knowing where we are.

24 MR. WALTON: I don't think anybody is going to
25 object when we go there, though, either. I think that's kind

1 of an agreement.

2 THE COURT: Right. You're getting along right now.
3 That's a good thing.

4 MR. WALTON: We will, Your Honor.

5 THE COURT: Anything from the police defendants?

6 MR. PFEIFER: No, Your Honor.

7 THE COURT: Okay. You're welcome to make opening
8 statements. I've read everything you have. I'm not sure how
9 much you could add to that. So you've got to trust me that
10 I've read. Now, whether I can remember it, that's a whole
11 different issue. I'm getting to be old. At the same time, you
12 can waive them and that would be fine with me.

13 MR. SULLIVAN: Based on our discussion at the
14 pretrial hearing where you asked for briefs of lieu of opening,
15 I'm prepared to move forward, if all the other parties are,
16 too, without opening.

17 THE COURT: Mr. Walton?

18 MR. WALTON: We agree, Your Honor.

19 MR. PFEIFER: We agree.

20 THE COURT: Okay. Tee it up.

21 MR. SULLIVAN: Okay. I'm going to call Diana Scott.
22 If you give me a moment, I will get her.

23 (Brief pause.)

24 MR. SULLIVAN: Your Honor, my error. Sal Parisi, we
25 will call to the stand first.

1 THE COURT: Mr. Parisi, right up over here to the
2 left of me, your right. When you get up here, face the
3 courtroom deputy, and he will place you under oath.

4 (The witness was duly sworn.)

5 THE COURT: You can be seated.

6 SALVATORE PARISI,
7 having been duly sworn, was examined, and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SULLIVAN:

10 Q. Good morning, Mr. Parisi.

11 A. Good morning.

12 Q. Would you introduce yourself to the Court and spell your
13 name, please.

14 A. My name is Salvatore Parisi. S-a-l-v-a-t-o-r-e. Parisi,
15 P-a-r-i-s-i.

16 Q. Thank you. What is your current position of employment?

17 A. I am basically the network administrator for the South Bend
18 Police Department. I handle all the servers, network, work
19 stations, laptops for the entire department.

20 Q. How long have you held that position?

21 A. Roughly ten-and-a-half years.

22 Q. Did you receive any training during the course of your
23 ten-and-a-half years with the South Bend Police Department?

24 A. Yes.

25 Q. Describe the training you received.

1 **A.** I received training for networking, running wires, cables,
2 all that stuff, for the department and got certifications to do
3 that, as well.

4 **Q.** During the course of your work and training with the
5 South Bend Police Department, have you had occasion to work
6 with and observe the telephone lines and systems at the
7 South Bend Police Department?

8 **A.** Yes.

9 **Q.** Okay. Have you observed how those lines come into the
10 building?

11 **A.** Yes.

12 **Q.** How they're initially hooked up in their -- when they enter
13 the building?

14 **A.** Yes.

15 **Q.** And have you observed how they're run through the building
16 through the different offices?

17 **A.** Yes.

18 **Q.** Through your experience and training, would you have
19 knowledge on how somebody would direct a phone line and number
20 from one office and switch it with a different office in the
21 South Bend Police Department?

22 **A.** Yes.

23 **Q.** And did I ask you to specifically look at two lines in the
24 South Bend Police Department and note their arrangement and how
25 they're hooked up and where they run?

1 **A.** Yes.

2 **Q.** Is there a diagram that you made that would help you in
3 explaining the physical layout of these lines?

4 **A.** Yes.

5 MR. SULLIVAN: Ryan, if you would, tell me the
6 exhibit numbers for these diagrams so I could refer to them.

7 MR. MILLIGAN: 36.

8 BY MR. SULLIVAN:

9 **Q.** This is Exhibit 36. Is this the diagram that you were
10 referencing?

11 **A.** Yes.

12 **Q.** Did you construct this diagram based upon your knowledge of
13 the system at the South Bend Police Department?

14 **A.** Yes.

15 **Q.** Okay. Would it aid in your testimony?

16 **A.** Yes.

17 **Q.** I'd like to refer to your diagram, and what I want you to
18 do is explain to the Court how the phone lines are set up in
19 the South Bend Police Department, and, specifically, two phone
20 lines, one that ends in the number 6031 and the other line that
21 ends in the number 7473. Okay?

22 **A.** Okay.

23 **Q.** If you notice, here, in the upper left-hand corner, there
24 is sort of a grayish triangular structure (indicating).

25 What does that represent?

1 **A.** The arrow at the bottom, or in the middle, to the left,
2 that is the AT&T service that comes in. That grayish structure
3 that you're referring to is the "D" mark, also the point where
4 all the telephone lines for the South Bend Police Department,
5 for the years as indicated, 2010-2012, come in and then proceed
6 to the rest of the department.

7 **Q.** Okay. So this represents all the phone lines coming into
8 the department, and they are distributed in what you have
9 termed here the "South Bend Police Department AT&T Rack"?

10 **A.** Correct.

11 **Q.** Now, you've got a red line here coming out of the bottom
12 and a blue line at the top (indicating). Please describe what
13 those are.

14 **A.** The red line indicates a recorded line corresponding to
15 phone number 6031 and the blue line indicates a non-recorded
16 line also referring to telephone number 7473.

17 **Q.** Okay. Now, let's first follow the red line. You mentioned
18 it's a recorded line. It comes off here and then splits into
19 two.

20 Why does it split into two?

21 **A.** When I went and looked to make this diagram, I saw two
22 lines coming off of the port number 521, which is also 6031,
23 one line going to the Voice Logger in the 911 center, and one
24 of the red lines also goes to the office at the other side of
25 the building.

1 Q. Okay. Now, you've called it the "Voice Logger." What is
2 the Voice Logger, Mr. Parisi?

3 A. The Voice Logger is basically a server, a computer system,
4 that certain phone lines, to my knowledge, are recorded.

5 Q. All right. So if we follow the outermost red line, it runs
6 across the top through what you call a "punch block."

7 What's a punch block? Just tell me what that is in
8 general layman's terms.

9 A. A punch-down block is basically a block where wires come
10 into one side, and then another set of wires go out and go to a
11 different location, so basically a jumper block.

12 Q. After it goes through this punch block, you've got it
13 running over into here (indicating). What's that?

14 A. That's the Voice Logger server.

15 Q. So the wire that would result in 6031 being recorded starts
16 at the location where the lines first come into the police
17 department; is that correct?

18 A. Correct.

19 Q. What is that location? Where is that located in the police
20 department?

21 A. That's located on the west side of the building in a switch
22 closet, a room.

23 Q. What do you call that switch closet?

24 A. We refer to it as switch closet A or IDF-A.

25 Q. Okay. Let's quickly look at this blue line (indicating).

1 Trace that for me. Where does that go?

2 **A.** That blue lines goes from port 203 in that SBPD AT&T rack
3 to a punch-down block in the same room, and then, from there,
4 goes to switch closet C, also referred to as IDF-C, and that
5 switch closet C is on the east side of the building.

6 **Q.** Now, I noticed that you've got the red line, another red
7 line, following that exact same path. Explain that to me.

8 **A.** Correct. The other red line goes to the punch-down
9 block that was --

10 **Q.** (Indicating.)

11 **A.** -- correct, right there, and then proceeds to go to switch
12 closet C from switch closet A.

13 **Q.** All right. So you've got both lines coming into switch
14 closet C, and then they loop down to the bottom. Why do they
15 do that, Mr. Parisi?

16 **A.** The top part of the rack is where all the lines from the
17 west side of the building come in through the ceiling and go
18 into the different switch closets. That is the top portion.
19 The bottom portion of that panel is the setup ports that go to
20 the individual offices. To make that connection from the top
21 portion to the bottom portion, you need a jumper wire to do so.

22 **Q.** Okay. And does that picture fairly and accurately
23 represent what that would look like on the back side of that
24 panel (indicating)?

25 **A.** Yes.

1 Q. And that is part of Group Exhibit 35.

2 Okay. And just let's complete these lines,
3 Mr. Parisi, how they run here to the bottom. What happens to
4 those lines there (indicating)?

5 A. Based on the ports that they're plugged into, the blue line
6 would then go from switch closet C through the ceiling to
7 office C156, corresponding with the phone number 7473, and the
8 red line would go to C157, corresponding with the phone number
9 6031.

10 Q. Okay. And it's undisputed in this case that there was a
11 time that Steve Richmond occupied office C156 and Rick Bishop
12 occupied office C157 with those respective numbers.

13 Now, who in the South Bend Police Department, to
14 your knowledge, was capable of performing the following task:
15 We want to take phone number 7473 and now have it be used in
16 office C157? Who knew how to do that?

17 A. Barb Holleman usually took care of it, but I also had
18 knowledge of how to do that.

19 Q. Okay. Did you ever talk to Barb about those tasks and how
20 they're accomplished?

21 A. Yes.

22 Q. What would be the easiest way to do that if you wanted to
23 make that change?

24 A. The easiest way would be in switch closet C, providing that
25 they were on the same side of the building. If we were talking

1 about these two offices (indicating), there's two ways. One
2 would be to switch the wires at the top portion of panel 1 up
3 there --

4 **Q.** (Indicating.)

5 **A.** -- yes, or at the bottom location of IDF-C panel 1.

6 Switching those wires in one of those places would result in
7 the phone number being switched.

8 **Q.** Now, if you just trade them in their ports, what would
9 happen to the phone numbers relative to offices 156 and 157?

10 **A.** If you traded them in their ports, the phone numbers would
11 switch offices.

12 **Q.** And an additional photograph from Exhibit 35.

13 MR. SULLIVAN: Is that right, Ryan, 35?

14 MR. MILLIGAN: Yes.

15 BY MR. SULLIVAN:

16 **Q.** Is this a photograph that fairly and accurately depicts
17 those jumper wires as they come off at the bottom part of panel
18 IDF-C?

19 **A.** Yes, it is.

20 **Q.** Okay. Did you actually look at these numbers here and
21 track what offices they go to; that is, the number 1-1-43 and
22 1-1-46?

23 **A.** Yes, I did.

24 **Q.** All right. And so, again, looking at this photograph,
25 Mr. Parisi, are you saying, literally, if I just unplug those

1 and switch the wires, it would result in the phone numbers
2 switching offices (indicating)?

3 **A.** Yes.

4 **Q.** And now if I took one of those and put it in 44 or 45,
5 where would it go?

6 **A.** It would go to a different office or cubicle in the
7 department corresponding with those numbers.

8 **Q.** All right. So if somebody performed that task because
9 Steve Richmond wanted to have his number to follow him to
10 office C157 -- I'm now showing you a demonstrative exhibit --

11 MR. SULLIVAN: Ryan, if you could, tell me which one
12 the after picture is.

13 MR. MILLIGAN: It's part of 36.

14 BY MR. SULLIVAN:

15 **Q.** Part of 36, second page of 36.

16 Does this fairly and accurately depict where the
17 wires would be after performing such a switch?

18 **A.** Yes.

19 **Q.** Okay. Now, let's talk about how this affects the Voice
20 Logger.

21 I noticed that you bracketed everything on the top
22 half by sort of an orange-ish line there. Why did you do that?

23 **A.** I did that to indicate that -- to indicate that nothing was
24 changed in that part when the phone numbers were switched when
25 they switched -- when they switched offices. There was nothing

1 from that point back that changed. It all remained the same.

2 Q. All right. The change involving these plugs down here,
3 that I'm indicating at the bottom part of IDF-C panel 1, would
4 result in the numbers being directed to different offices over
5 here (indicating); is that what you're saying?

6 A. Yes.

7 Q. And I notice that you still have the same red line that
8 runs right into the Voice Logger; is that correct?

9 A. Yes.

10 Q. Making this change here doesn't do anything to the change
11 at the top part in the AT&T rack and the Voice Logger; do I
12 have that right?

13 A. Right.

14 Q. Now, what would that result in, in terms of which line was
15 being recorded by the Voice Logger?

16 A. Are you -- could you repeat the question?

17 Q. Sure. When you make this change down here but don't make
18 any change up there (indicating), which telephone line and
19 number would be recorded by the Voice Logger?

20 A. It would still be 6031.

21 Q. And which office would it be in?

22 A. On that diagram, it would be in C156.

23 Q. Okay. You read the deposition of Barb Holleman?

24 A. I did.

25 Q. And is it your view that that's how she performed the

1 switch, as you've described it to us?

2 **A.** Yes.

3 **Q.** So if I can, Mr. Parisi, the wiring to the Voice Logger is
4 upstream, so to speak, from the wiring that changed and
5 redirected the line to the office; is that fair?

6 **A.** Yes.

7 MR. SULLIVAN: No further questions, Your Honor.

8 THE COURT: Mr. Walton.

9 CROSS-EXAMINATION

10 BY MR. WALTON:

11 **Q.** Good morning, Mr. Parisi.

12 **A.** Good morning.

13 **Q.** You're not offering any testimony of your own personal
14 knowledge of what happened in this case, are you?

15 **A.** No.

16 **Q.** And you're not offering any testimony of your own personal
17 knowledge of the timing of the recordings or when they were
18 going to be recorded or any of that sort of thing?

19 **A.** No.

20 **Q.** You were not personally involved in the decisions regarding
21 making recordings at the department when they were made by
22 Chief Fautz?

23 **A.** No.

24 **Q.** Or Chief Boykins?

25 **A.** No.

1 Q. Okay. And you weren't personally involved in any of the
2 changes that may have occurred from 2004 to the dates
3 applicable to this case?

4 A. No.

5 Q. That was Barb Holleman?

6 A. Yes.

7 Q. Is the recording system, then, a component part of the
8 telephone system at the South Bend Police Department?

9 A. Are you asking about the Voice Logger?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. Who was the service provider of the recording
13 system?

14 A. I don't know.

15 Q. But the City was responsible for maintaining the recording
16 system, were they not?

17 A. I assume so, but I can't say for certain.

18 Q. Fair enough.

19 Was it common practice, when you were there, for
20 officers who previously had their number follow them to a new
21 office?

22 A. Yes.

23 Q. And was it Barb Holleman's duty to follow the directions of
24 Chief Richmond at the time when he was chief of the
25 Investigative Bureau?

1 MR. SULLIVAN: Objection. Lack of foundation,
2 Your Honor, and beyond the scope.

3 THE COURT: I'm going to overrule it at this point.

4 BY MR. WALTON:

5 Q. Based on your experience, when Barb Holleman -- was it her
6 duty to follow the directions of Chief Richmond when she was
7 asked to switch his old number into his office?

8 A. I don't know.

9 Q. Based on your experience, would that have been in the
10 ordinary course of her duties at the department when she was
11 there?

12 MR. SULLIVAN: Objection. No foundation.

13 THE COURT: Do you know?

14 THE WITNESS: I don't.

15 MR. WALTON: All right. Okay. Thanks. That's all
16 the questions I have.

17 THE COURT: Mr. Pfeifer.

18 CROSS-EXAMINATION

19 BY MR. PFEIFER:

20 Q. The Voice Logger system was limited in terms of the number
21 of phone lines that could be recorded; is that true?

22 A. I don't know. I didn't really do anything with the
23 software.

24 Q. Okay. Not every phone line at the South Bend Police
25 Department was recorded; is that correct?

1 **A.** I don't know.

2 **Q.** Okay. Fair enough.

3 MR. PFEIFER: Thank you.

4 THE COURT: Redirect?

5 MR. SULLIVAN: No, Your Honor. Nothing further.

6 THE COURT: Okay. Is this witness excused?

7 MR. SULLIVAN: Yes, Your Honor.

8 THE COURT: Thank you very much.

9 MR. SULLIVAN: Now we will call Diana Scott.

10 THE COURT: Ms. Scott, this way (indicating). When
11 you get there, turn and face the courtroom deputy, and he will
12 place you under oath.

13 (The witness was duly sworn.)

14 THE COURT: You can be seated.

15 MR. SULLIVAN: Your Honor, a little housekeeping
16 matter.

17 We talked about the agreed submission of the
18 deposition of Barb Holleman, and I just wanted to make sure
19 that the Court has -- Scott, did we give those to you yet?

20 THE CLERK: No.

21 MR. SULLIVAN: We would like to do that now to make
22 sure they're in evidence.

23 May I approach, Your Honor?

24 THE COURT: Yes, you may.

25 (Deposition of Barb Holleman tendered to the Court.)

1 DIANA SCOTT,
2 having been duly sworn, was examined, and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SULLIVAN:

5 Q. Good morning, Ms. Scott.

6 A. Good morning.

7 Q. How are you today?

8 A. Great.

9 Q. Okay. What's your current position with the South Bend
10 Police Department?

11 A. I'm the director of communications for the South Bend
12 Police Department.

13 Q. And how long have you held that position?

14 A. Since April of 2012.

15 Q. What position did you hold prior to that?

16 A. I was the assistant director of communications.

17 Q. How long were you the assistant director?

18 A. From 2006 until April of 2012.

19 Q. Okay. What did you do before that, before you were the
20 assistant director?

21 A. I was a supervisor in the communications center.

22 Q. How long were you a supervisor?

23 A. Oh, approximately three years.

24 Q. And before that?

25 A. I was a dispatcher.

1 Q. When did you start as a dispatcher?

2 A. May the 5th, 1999.

3 Q. Have you been with the police department since 1999?

4 A. Yes, I have.

5 Q. And are those all the positions you've held with the
6 South Bend Police Department?

7 A. That's correct.

8 Q. Did you receive any training to be a dispatcher?

9 A. Yes.

10 Q. Describe what that training was.

11 A. When I was a new dispatcher, we went through a small --
12 several of us in the classroom to learn how to use the software
13 programs that are used at the dispatch center. We then did
14 one-on-one training with other dispatchers that were assigned
15 training officers, and then several certifications and
16 trainings to maintain skill level, such as emergency medical
17 dispatch, fire communications, et cetera.

18 Q. How about when you were promoted as a supervisor; did you
19 receive training at that time?

20 A. Yes.

21 Q. Describe that.

22 A. That was one-on-one training with other supervisors that
23 showed us the things that we had -- the duties that were
24 assigned to us, how to do those. Karen worked with us, as
25 well.

1 Q. By "Karen," who are you referring to?

2 A. Karen DePaepe.

3 Q. Thank you. What were the differences in your job in being
4 a dispatcher versus being a supervisor?

5 A. Being a supervisor, you're responsible for the day-to-day
6 operations of the shift that you're managing, which would
7 include staffing, scheduling, overtime, overseeing the
8 incidents that are going on as far as the dispatch protocols,
9 making sure that the dispatchers are getting dispatches out in
10 a timely manner, that calls are handled correctly, and that we
11 address all the needs of the citizens and responders that we're
12 responsible for.

13 Q. Okay. Now, as you were promoted to assistant director, did
14 you also receive training upon that promotion?

15 A. Yes, I did.

16 Q. Describe that.

17 A. I had one-on-one training with then assistant director Pam
18 Kaufman, as well as training from Karen DePaepe.

19 Q. During that training, were you -- did you learn about
20 what's been called the Voice Logger recording system?

21 A. Yes. That began when I became a supervisor.

22 Q. Did you receive additional training when you became
23 assistant director?

24 A. No.

25 Q. What you knew as supervisor you just continued to use as

1 assistant director?

2 **A.** Correct.

3 **Q.** And through the course of being a supervisor and assistant
4 director, were you informed about the operations of the
5 communications center in general?

6 **A.** Yes.

7 **Q.** Did you learn the procedures and routines of the
8 communications center?

9 **A.** Yes.

10 **Q.** Who did you learn that from?

11 **A.** I learned from other supervisors, from the assistant
12 director, and from Karen DePaepe.

13 **Q.** In all that training as a supervisor and as assistant
14 director, was there a manual of some kind that you received for
15 that training?

16 **A.** No.

17 **Q.** Were there any written policies that you received that
18 applied to the communications center?

19 **A.** Yes.

20 **Q.** What policies did you receive?

21 **A.** They were generalistic policies that had to do with
22 attendance and time and dispatching of certain types of calls.

23 **Q.** Did any of those policies have anything to do with what
24 lines should be recorded?

25 **A.** No.

1 Q. With the procedure to put a line into the communications
2 system?

3 A. No.

4 Q. What about the procedure to remove it from the
5 communications system?

6 A. No.

7 Q. And, again, focusing on your training to be the assistant
8 director, anything that you received in writing during that
9 training process?

10 A. No.

11 Q. I apologize if I asked you this already.

12 Who was responsible for training you to be the
13 assistant director?

14 A. Then assistant director Pam Kaufman and Karen DePaepe.

15 Q. Okay. I'm going to ask you to focus now on your time as
16 assistant director.

17 What were your duties?

18 A. As assistant director, I was responsible for the training
19 of new dispatchers that were hired, as well as ongoing training
20 of the current dispatchers, maintaining their certifications.
21 I was responsible for quality control audits that are mandated
22 and required. I filled in as a supervisor on the floor.

23 Q. Did you train anybody else as an assistant director besides
24 the dispatchers in the communications center?

25 A. Yes, I did.

1 Q. Who else?

2 A. The front desk personnel.

3 Q. By "front desk," at the police department?

4 A. Correct.

5 Q. When did you begin to take that role?

6 A. As best I can remember, sometime around 2008, 2009, we were
7 asked to take on the managing of the front desk, so that's when
8 they would have been.

9 Q. By "we," you mean the communications administrative
10 personnel in the communications center?

11 A. Correct.

12 Q. So the front desk people at the police department became
13 the responsibility of the communications center; do I have that
14 right?

15 A. Yes.

16 Q. Okay. When you trained front desk and dispatchers, did you
17 talk to them about the recorded lines in the police department?

18 A. Yes.

19 Q. Describe for me how you trained them on that issue.

20 A. Both front desk and communications?

21 Q. Yes.

22 A. The communications center personnel were given a manual,
23 and there was some information in there as to recordings of
24 lines in the communications center. We also discussed that as
25 part of our training, what lines were recorded and that there

1 was a line that was available to them to use that was not
2 recorded. A phone, I should say, that was available to them.

3 The front desk personnel, we just -- everything was
4 verbal. There was no training manual for them, so they were
5 informed that the lines were recorded, all of them, and that
6 they should not have personal conversations on those lines.

7 Q. And by "all of them," you mean all the lines where?

8 A. At the front desk.

9 Q. At the front desk.

10 Did the division chief ever work at the front desk
11 as a regular employee assigned to the front desk?

12 A. Not regularly.

13 Q. What about a captain, say, in the Investigative Division;
14 is that a regular part of the captain's duties, to sit at the
15 front desk?

16 A. Not regularly.

17 Q. Do they participate in the training, in your experience?

18 A. No.

19 Q. You mentioned a training manual when you deal with the
20 dispatchers, right?

21 A. Yes.

22 Q. And you said it had a reference to the recorded phone
23 lines. Do you recall what that reference said?

24 A. I couldn't tell you exactly what it says.

25 Q. Would looking at that manual help refresh your

1 recollection?

2 **A.** Yes.

3 MR. SULLIVAN: Your Honor, may I approach to show
4 the training manual, which is not in evidence, but for purposes
5 of refreshing her recollection?

6 THE COURT: Yes, you may.

7 MR. SULLIVAN: Okay. This has been provided to both
8 the parties.

9 **Q.** Is that a copy of the training manual that you used when
10 you trained the dispatchers?

11 **A.** Yes, it is.

12 **Q.** Do you think you would be able to find the reference that
13 you were referring to?

14 **A.** I can try.

15 **Q.** I think you might want to look toward the back.

16 **A.** Okay.

17 **Q.** I might have it tabbed.

18 **A.** Oh.

19 **Q.** I'm sorry. I should have directed you there.

20 **A.** That's okay. Yes, I see it here.

21 **Q.** Would you read the sections that you were recalling?

22 THE COURT: Is there any objection to her reading
23 it?

24 MR. WALTON: No, Your Honor.

25 MR. PFEIFER: No, Your Honor.

1 **A.** "All telephone lines placed from the communications
2 center dispatch" -- telephone calls; excuse me -- "placed from
3 the communication center dispatch floor are recorded and kept
4 on file for a period of three years. The recorded data is
5 often pulled and used in court as part of evidence to a case.
6 At no time should communication specialists use profane
7 language on recorded lines. Personal telephone calls on taped
8 lines will not be permitted. Personal phone calls should be
9 made from the non-taped break room telephone. Personal phone
10 calls should be made by the employee during their break/lunch
11 time only. Long distance personal phone calls are not
12 permitted. Violations are subject to disciplinary actions.
13 This does not include the receipt of emergency calls. Should
14 you receive a family or personal emergency call, you may take
15 the call immediately from the dispatch floor. If you have a
16 personal emergency, notify your supervisor immediately and
17 arrangements will be made to relieve you from your duties.
18 Cell phones are not permitted on the dispatch floor and should
19 be turned off while you are working."

20 MR. SULLIVAN: May I approach, Your Honor?

21 THE COURT: Yes, you may.

22 BY MR. SULLIVAN:

23 **Q.** Okay. Thank you, Ms. Scott.

24 Now, that provision that you just read was never
25 given to the personnel at the front desk, as I understand from

1 your earlier testimony?

2 **A.** That's correct.

3 **Q.** You didn't have a training manual like that for the
4 South Bend Police Department personnel at the front desk?

5 **A.** Correct.

6 **Q.** You gave an oral description of the front desk lines?

7 **A.** Yes.

8 **Q.** Did you ever see any such written description about the
9 phone lines at the police department for anything other than
10 the dispatchers in all your years at the South Bend Police
11 Department?

12 **A.** No.

13 **Q.** Did you ever do training with the dispatchers or the front
14 desk people about the Wiretap Act?

15 **A.** No, I did not.

16 **Q.** Did anybody ever train you on it?

17 **A.** No.

18 MR. SULLIVAN: Your Honor, I would like to approach
19 and hand her Exhibit 6. Maybe we could get an exhibit binder.
20 Can we just leave an exhibit binder up at the witness table,
21 Your Honor?

22 THE COURT: Anybody got a problem with that?

23 MR. PFEIFER: That's fine, Your Honor.

24 MR. WALTON: No, Your Honor.

25 THE COURT: Okay.

1 MR. SULLIVAN: Okay.

2 (Exhibit binder tendered to the witness.)

3 MR. SULLIVAN: Just one moment, Your Honor.

4 Q. Ms. Scott, would you refer to Exhibit 20, please.

5 A. (Witness complies.)

6 Q. Just to make sure we're on the same thing, is that the
7 police department telephone and voicemail list?

8 A. Yes, it is.

9 Q. Have you seen that before?

10 A. I have.

11 Q. How did you come to see a list like this?

12 A. We were e-mailed them from time to time, updated voicemail
13 lists from the chief's secretary.

14 Q. And who was the chief's secretary?

15 A. At that time, it was Barb Holleman.

16 Q. If you would look at the last page, on the very last entry
17 on the bottom of the right-hand column, it says "7/23/09 bh."

18 Do you see that?

19 A. I do.

20 Q. Do you know what that refers to?

21 A. That this list was updated on 7/23 of 2009 by Barb
22 Holleman.

23 Q. Now, there was some discussion before about the number
24 of -- the number of lines that the Voice Logger can record
25 versus the number of lines in the police department.

1 Do you know how many lines the Voice Logger can
2 record?

3 **A.** I don't know the exact count.

4 **Q.** Can you give us an estimate?

5 **A.** I would say 60 to 70, possibly.

6 **Q.** Do you have an estimate on the number of what we'll call
7 assigned telephone numbers, based on looking at Exhibit 20,
8 that exist in the South Bend Police Department?

9 **A.** Well over a hundred.

10 **Q.** Okay. Now, I notice that you've got all the last names,
11 first names, and then it has a voicemail number and a telephone
12 number.

13 Do you know why there's two different things there?

14 **A.** Some officers, such as a uniform patrol officer that
15 doesn't have a specific office within the police department,
16 would only have a voicemail. So when you see a reference to
17 235-5888, that's the general voicemail box for the police
18 department and then their voicemail number, so that would be
19 how messages would be left for those.

20 **Q.** Okay. So do I take it that -- let's look at the very first
21 one, Alma Alvarez, as an example. It's 235-5888 for Alma
22 Alvarez.

23 In looking at this, would you assume that that's a
24 uniform patrol officer?

25 **A.** She is.

1 Q. And she does not have an individually assigned telephone to
2 her in the South Bend Police Department?

3 A. That's correct.

4 Q. She would share that number with other police officers?

5 A. Correct.

6 Q. But she would have a voicemail box for people to leave
7 messages for her?

8 A. Correct.

9 Q. Is that what the 2000 indicates there?

10 A. Yes.

11 Q. So I assume, like so many of us have experienced, if you
12 call in, it's menu driven?

13 A. Correct.

14 Q. Are you on this list, Ms. Scott?

15 A. I don't know. I would have to look.

16 Q. Okay. I think, if you look on the second-to-last-page --

17 A. Yes, I am.

18 Q. Does that mean that you have a line assigned to your name?

19 A. I have a line assigned to my name; however, it's not
20 reflected on this list other than the voicemail number. That
21 was my assigned line.

22 Q. I'm not sure I know what you mean.

23 A. Well, the number that's listed next to me, the 235-9361, is
24 the general number to the communications center. I had an
25 assigned phone, and that number was 235-9119.

1 Q. And that's shown as the voicemail number, too?

2 A. It's 235-9119.

3 Q. So if someone were to dial 235-9119, who would they get on
4 the other line if you were in your office?

5 A. In 2009, they would have gotten me.

6 Q. I think, if you look on that same page, you will see Steve
7 Richmond's name up above as you move up.

8 A. Yes.

9 Q. And what is his number?

10 A. 235-7473.

11 Q. And his voicemail box is the same number?

12 A. Correct.

13 Q. Does that indicate to you that he had a private assigned
14 line?

15 A. Yes.

16 Q. And I would like you to do the same thing and look for
17 Brian Young.

18 A. Okay.

19 Q. What number does he have?

20 A. 235-5016.

21 Q. And what's his voicemail number?

22 A. 5016.

23 Q. What does that tell you about whether he had a phone and
24 phone line assigned to him?

25 A. I would assume that he had that phone assigned to him.

1 Q. Finally, if you would look up Richard Bishop.

2 A. Okay.

3 Q. What is his number?

4 A. 245-6031.

5 Q. And his voicemail number?

6 A. 6031.

7 Q. And at the time this list was compiled in 2009, do you know
8 what position he held?

9 A. I do not.

10 Q. Okay. Let's talk about this thing we've called the "Voice
11 Logger."

12 Does it have a real name?

13 A. Yes. It's the Dynamic Instruments Digital Voice Recorder.

14 Q. The Dynamic Instruments Digital Voice Recorder that you use
15 now, or the Voice Logger, when was it installed?

16 A. In 2004, I believe.

17 Q. 2004?

18 A. I believe.

19 Q. And since 2004, have you changed the machine at all? Have
20 you replaced it?

21 A. No, it's the same machine.

22 Q. Same one.

23 When you installed that machine -- can we just call
24 it the Voice Logger? Is that what people refer --

25 A. Yes.

1 Q. Okay. That would probably be easier.

2 When that Voice Logger was installed, did the police
3 department gain capability for recording additional lines?

4 A. Yes.

5 Q. Do you know how many?

6 A. I don't.

7 Q. I'd like you to tell me how the system works. Describe for
8 the Court how the system works.

9 A. The system is voice activated, meaning that anything that
10 is wired into it, once voice or noise is heard, it activates
11 that recording. It lays dormant, I guess, so to speak -- it
12 doesn't record dead air, is a better phrase -- but it then
13 records anything that comes across that line that is recorded.

14 Q. If the line is hooked into it?

15 A. Correct, anything that is hooked into the Voice Logger.

16 Q. All right. Why does the Police Department have such a
17 system?

18 A. We're often called upon for court cases, criminal matters,
19 to provide 911 recordings. We are also required to do quality
20 assurance checks for our emergency medical dispatch, as well as
21 for other types of calls that we take to make sure that the
22 dispatchers and personnel are adhering to our policies and the
23 procedures that we have. We do them to investigate complaints,
24 as well as requests from investigators.

25 Q. Does that cover it?

1 **A.** Pretty much.

2 **Q.** Okay. And what are the lines that are recorded in the
3 South Bend Police Department?

4 And let's -- we'll use the July 2009 date that was
5 on that Exhibit 20 as a reference point.

6 Do you know what was recorded in July of 2009?

7 **A.** I could give you my best guess, but it probably wouldn't be
8 a complete list.

9 **Q.** Let's start with this: Are there some lines that you know
10 were recorded at that time --

11 **A.** Yes.

12 **Q.** -- and others that you don't know?

13 **A.** Correct.

14 **Q.** What did you know?

15 **A.** I know that all of the positions within the communications
16 center were recorded. All of the --

17 **Q.** Let me back you up right there.

18 When you say "positions," what do you mean?

19 **A.** Positions are different than a line. Things are recorded
20 differently that come from the communications center, in that
21 there are many lines that go into our 911 phone equipment, and
22 so it is not recorded based on a phone number or a phone line,
23 per se, but a line that runs from that particular position
24 within our communications center to the Voice Logger, so there
25 are many lines that lie on each one of those positions.

1 Q. Okay. So every position in the dispatch center -- which
2 might have multiple lines coming in from radio traffic or the
3 fire department, et cetera, right -- but every position in the
4 dispatch room is recorded?

5 A. The radio is a little different. That's wired in
6 differently. But everything that is on -- and contained on --
7 that 911 phone, runs on one line into the Voice Logger that is
8 identified by the position.

9 Q. Okay. What else did you know in 2009 that was recorded?

10 A. I knew the front desk was recorded.

11 Q. When you say "the front desk," there are telephones there?

12 A. Yes.

13 Q. And there are several lines so that if two people call in
14 at the same time it rolls down?

15 A. That's correct.

16 Q. Other than the front desk and 911, what else did you know
17 that was recorded?

18 A. Nothing.

19 Q. Okay. You didn't know the specific lines, but did you know
20 there were other lines that were recorded? Were you aware of
21 the fact that there were other lines recorded; you just didn't
22 know what those lines were?

23 A. Yes.

24 Q. Why didn't you know what those lines were?

25 A. Those were not anything that would have affected my duties

1 or anything that I would have been involved with.

2 **Q.** Who handled those lines?

3 **A.** Karen DePaepe.

4 **Q.** And did she ever talk to you in general about what those
5 lines were?

6 **A.** Yes.

7 **Q.** And in general, what was your awareness about what those
8 other lines were that you didn't deal with as an assistant
9 director in 2009?

10 **A.** I knew there were lines that went to the chief's offices,
11 Internal Affairs, but didn't know specifically what lines were
12 recorded.

13 **Q.** I take it, since you didn't know, you never saw any writing
14 in the 2009 timeframe that indicated what those lines were; is
15 that correct?

16 **A.** No, I did not.

17 **Q.** And did the communications department have any routine in
18 regard to what those other lines would be?

19 **A.** Not to my knowledge.

20 **Q.** How did Karen know what they should be?

21 **A.** Karen was directed by the chief as to what would be
22 recorded.

23 **Q.** Now, I was asking you to frame your questions around 2009,
24 but now I want to ask you: Did you ever see a complete list of
25 the recorded telephones lines in the South Bend Police

1 Department?

2 **A.** Yes, I did.

3 **Q.** When?

4 **A.** Around October of -- October 12th of 2011.

5 **Q.** What were the circumstances in which you received a list
6 for the recorded telephones lines?

7 **A.** It was for a meeting that I was in concerning the
8 conversion of the police phones from the Centrex lines to a
9 VoIP system.

10 **Q.** What do you mean by "VoIP"?

11 **A.** Voice over Internet Protocol phone systems.

12 **Q.** In keeping this on about an eighth grade level for me, can
13 you tell me what's the difference between a Centrex phone and a
14 VoIP phone?

15 **A.** A Centrex, a traditional phone, goes over a phone line, a
16 phone wire, where Voice over Internet phones go over an
17 Internet connection.

18 **Q.** Okay. So the City was switching from one system to
19 another?

20 **A.** That's correct.

21 **Q.** The police department had to be part of that switch?

22 **A.** The police department, with the exception of the
23 communications center.

24 **Q.** So the communications center wasn't going to go to VoIP?

25 **A.** Correct.

1 Q. And the meeting you participated in was to discuss that
2 changeover?

3 A. Correct.

4 Q. Just to be clear, the changeover didn't happen in October;
5 you were in a meeting about it?

6 A. Correct.

7 Q. So you were telling me that that -- what was it that led
8 you to receive this list for that meeting?

9 A. We needed a list of the recorded lines so that the City
10 Information Technologies -- they were looking at a vendor that
11 could provide us with a recording mechanism for our front desk
12 calls and any other lines that were needed to be recorded at
13 the police department, and so we needed the official list of
14 what was currently recorded, and so that's how I called
15 Karen --

16 Q. -- Karen DePaepe?

17 A. -- Karen DePaepe, and she instructed me how to get on to
18 her computer on the desktop where I located the list.

19 Q. It was Karen's responsibility to keep the list?

20 A. Correct.

21 Q. If you go to Exhibit 9, the second page, if you look at the
22 second, third, and fourth page of Exhibit 9, and just indicate
23 to me when you found that.

24 A. Yes, I have it.

25 Q. Okay. Is that the list that you've been talking about?

1 **A.** Yes.

2 **Q.** I want to briefly talk about this list. Let's look at this
3 first page. Describe for me what these numbers are under the
4 headings "Police, Fire, and Direct Ring-Down Lines."

5 **A.** The lines that are listed under "Police" are all lines that
6 ring into our communications center. The ones under "Fire," as
7 well, ring into our communications center, as well as the
8 "Direct Ring-Down Lines."

9 **Q.** What does that mean, to have a direct ring-down line?

10 **A.** That's a direct connection between your physical location
11 and another location. You pick it up, and it automatically
12 rings on a dedicated phone at that location.

13 **Q.** So that covers the first page.

14 All of these conversations that occurred on these
15 lines, did the communications department record these?

16 **A.** Yes. They were the ones that would have been on those
17 positions that we talked about earlier.

18 **Q.** And, therefore, anybody who used the phones and the lines
19 that are represented on this first page -- I'm sorry -- the
20 second page of Exhibit 9, the people who used those would have
21 gone through the training that you conducted; is that correct?

22 **A.** Correct. There may have occasionally been an officer that
23 walked in and used a line, but --

24 **Q.** But in the normal course --

25 **A.** Normal course, no. It would have all been our personnel.

1 Q. And those would be called the dispatchers, right?

2 A. Correct.

3 Q. And they were the ones who would have received that
4 training manual that we looked at earlier?

5 A. Yes.

6 Q. Go to the next page, now the third page of Exhibit 9.

7 A. (Witness complies.)

8 Q. And the heading is "Administrative Phones."

9 What does it mean to say the "administrative
10 phones"?

11 A. The heading means lines that are located outside of the
12 communications center.

13 Q. And the first batch of them all say "Front Desk."

14 A. Yes.

15 Q. I assume that's the front desk of the police department
16 that we talked about earlier?

17 A. Correct.

18 Q. You did training of the people at the front desk?

19 A. Correct.

20 Q. These are the folks that did not receive the manual?

21 A. That is correct.

22 Q. But you talked to them about the fact that all the front
23 desk lines are recorded?

24 A. The ones that I trained, yes.

25 Q. The ones that you trained, right?

1 **A.** Correct.

2 **Q.** Do you have any doubt that anybody who trained people on
3 the front desk would mention that they're recorded?

4 **A.** No, I'm certain everyone knew.

5 **Q.** That was a regular part of how the communications center
6 trained the front desk personnel?

7 **A.** That's correct.

8 **Q.** Now we have a series of other numbers, and I'll just
9 mention the groups: Internal Affairs, Chief's Office, Records,
10 Records Director, Detective Bureau numbers; is that right?

11 **A.** Correct.

12 **Q.** Are these the numbers you mentioned earlier that you didn't
13 have anything to do with as assistant director?

14 **A.** That's correct.

15 **Q.** But you came to learn that these were the numbers recorded
16 when you received this list?

17 **A.** Yes. I learned about some of them prior to that when Karen
18 gave me access when she went on her medical leave.

19 **Q.** When did she go on medical leave?

20 **A.** Around August of 2011.

21 **Q.** In August of 2011, did you have to fulfill the role and the
22 duties that Karen DePaepe had as director?

23 **A.** I did.

24 **Q.** Pursuant to that, you learned about these other
25 administrative numbers?

1 **A.** I learned there were other ones, and I was given access to
2 them.

3 **Q.** Okay. August 2011?

4 **A.** Correct.

5 **Q.** And how long did Ms. DePaepe's medical leave last?

6 **A.** I couldn't tell you for certain. Somewhere close to the
7 end of October, beginning of November of 2011.

8 **Q.** Thank you. When you had access to these lines, and you
9 learned the specific ones, were you surprised by any of them?

10 **A.** No.

11 **Q.** Had Karen, at least in general terms, discussed with you
12 that there were these other lines?

13 **A.** Yes, I knew there were other lines.

14 **Q.** But when you stepped into the role of director of
15 communications for Karen DePaepe's medical leave, at that time,
16 did anyone inform you that there was a routine practice with
17 regard to which lines would be recorded?

18 MR. WALTON: Your Honor, I would like to pose an
19 objection. This is way outside the scope of where we need to
20 be in October of 2011.

21 MR. SULLIVAN: Your Honor, can I respond?

22 THE COURT: Just a second.

23 Go ahead.

24 MR. SULLIVAN: Your Honor, the relevant testimony
25 here is meant to bring out Ms. Scott's awareness of whether

1 there was an ordinary practice in regard to which lines were
2 recorded. Mr. Walton's objection seems to suggest that the
3 only thing that is relevant is what people knew on the
4 particular days that the recordings in question took place.

5 The fact is, it's probative of whether this
6 operation, the communications center and the police department,
7 had any regular course, and what they were doing in 2011 is
8 probative of what was done generally in the communications
9 center and the police department, so the testimony is directly
10 on point.

11 THE COURT: Well, the question itself can be
12 answered "yes" or "no." It asks did she know.

13 The question said: "...did anyone inform you that
14 there was a routine practice with regard to which lines would
15 be recorded?"

16 That can be answered "yes" or "no." I will overrule
17 the objection at this point.

18 MR. SULLIVAN: Thank you.

19 Can I ask that the question be read back so that we
20 know exactly what the question was?

21 THE COURT: Can you read that back? I normally
22 don't like that; I like you to restate your question, but
23 anyway.

24 (Record read.)

25 **A.** Yes.

1 BY MR. SULLIVAN:

2 Q. Who did?

3 A. Karen.

4 Q. And what did she say?

5 MR. WALTON: Your Honor, again, the legality of the
6 recordings are based upon when they were recorded, and the
7 facts in this case show that the last time anybody looked at
8 the recorded lines was July 2011.

9 We're now talking about what she's learning in
10 October 2011 and later, and the act of recording had already
11 taken place. I don't know why this is relevant.

12 MR. SULLIVAN: Actually, I think, Your Honor, what
13 we're talking about is August of 2011. That's when Karen
14 DePaepe went on medical leave and would have had to instruct
15 the assistant director how to step into her role, and part of
16 that instruction would have been to tell her if there were any
17 procedures regarding recorded lines. That's the first point.
18 I think we're dealing with August.

19 The second point is that the recordings at issue, we
20 have stipulated as to when the dates of those occurred, and
21 some of them were in July, so barely a month before this
22 meeting took place, and so the communication about what the
23 procedure was or wasn't would be probative on what she had done
24 up to that point.

25 Furthermore, there's undisputed testimony that

1 Ms. DePaepe then accessed the underlying recordings sometime in
2 December to create cassettes to then give to Chief Boykins, and
3 those actions also are probative and reflect what was the
4 procedure, or not, and what people believed it was and what
5 their actions showed.

6 So I don't see how we can restrict testimony to some
7 arbitrary time when the sole question for the Court to answer
8 is: Were these recordings created by a law enforcement officer
9 in the performance of their ordinary duties?

10 So the scope, to understand what those duties were,
11 may require testimony at times both before and after when the
12 recordings took place.

13 THE COURT: Mr. Walton?

14 MR. WALTON: Your Honor, the only probative value
15 right now would go towards the issue of damages, which has
16 already been resolved in this case. What she did or didn't do
17 after the recordings that she put on tapes that were recorded
18 in July -- the last one was in July of 2011 -- is irrelevant
19 for the Court's consideration.

20 We're here trying to determine whether or not the
21 system, when it was set up, was set up in accordance with the
22 law and performing in a manner in which it should under the
23 law.

24 We're not here talking about what she did with the
25 tapes. We're not here about what this witness learned later,

1 in 2011, 2012, or any other time.

2 THE COURT: I assume this is being offered not for
3 the truth of what she told her but the effect it had on her?

4 MR. SULLIVAN: Well, first of all, Ms. DePaepe was a
5 party-opponent in these consolidated cases, so --

6 THE COURT: But she's not now.

7 MR. SULLIVAN: She's currently not a party, no,
8 Your Honor, but there were statements that she made at the time
9 that would be admissible because they were made as a
10 party-opponent, so it would be an admission against interest or
11 an admission by a party-opponent when the statement was made.

12 But, in addition, they're reflective of this
13 witness' knowledge about what or whether there was an ordinary
14 course, not necessarily the truth of what Karen DePaepe may
15 have said in her statement.

16 And I think, again, it's important, Your Honor, to
17 understand that the ordinary course of conduct is what's at
18 issue here. And if somebody does "A" all the time and then
19 does not do "A" and then does "A" again, then you can look at
20 all those actions and determine what was regular and what stood
21 out as irregular.

22 Consequently, the need to gain evidence that is
23 longitudinal, that extends over time, is critical to
24 understanding whether actions were taken as part of a regular
25 course or whether those actions were one time ad hoc, whether

1 they were extraordinary, or whether they were ordinary.

2 I don't know how else we can get at that evidence
3 without showing what people were doing.

4 THE COURT: I'm going to permit the question that
5 was asked to be answered. In trying to explain why you're
6 entitled to it, we've kind of gone a ways away, but the
7 question you asked, I'm going to overrule the objection as to
8 that question.

9 MR. SULLIVAN: Okay. I'm going to need the question
10 read back again, Your Honor.

11 THE COURT: If she can find it.

12 COURT REPORTER: The last question was: "And what
13 did she say?" Do you need more context?

14 MR. SULLIVAN: No, I think I've got it. I'm sorry.

15 COURT REPORTER: I can read back more.

16 MR. SULLIVAN: No, no. That's fine.

17 **Q.** Ms. Scott, you had a conversation when you took the role of
18 director -- when you acted in the role as director while Karen
19 went on medical leave and she told you whether there was a
20 regular course.

21 What did she tell you?

22 **A.** She told me that the recorded lines were decided by the
23 chief of police.

24 **Q.** Did she tell you anything else about what the standard
25 procedure was?

1 **A.** No.

2 **Q.** Stepping into her role as director, acting as director
3 during that period of time, did you feel that you would need to
4 know what the ordinary procedures were in regard to recorded
5 lines? Did you think that was important for your job?

6 **A.** I'm not certain I understand what you're asking me.

7 **Q.** I just want to know if understanding the ordinary course of
8 how the communications department handled recorded lines was
9 something that you needed to know as you stepped in and
10 fulfilled Karen's role as director?

11 **A.** Yes.

12 **Q.** Okay. Prior to when Ms. DePaepe went on medical leave, did
13 you have any understanding about whether all the division
14 chiefs' lines were recorded?

15 **A.** I knew some were. I don't know that I knew if all of them
16 were.

17 **Q.** Okay. What about whether there were captains, either in
18 the Uniform Division or in the Investigative Division, that
19 were recorded; did you have any understanding about that?

20 **A.** Nothing specific.

21 **Q.** Lieutenants?

22 **A.** No.

23 **Q.** Sergeants?

24 **A.** No.

25 **Q.** At this meeting where Karen prepares you to step into the

1 role as director, she didn't mention any of that?

2 **A.** No.

3 **Q.** She didn't tell you there's a regular procedure to record
4 all division chiefs, did she?

5 **A.** No.

6 **Q.** She didn't say there's a regular procedure to record all
7 captains?

8 **A.** No.

9 **Q.** And she didn't say there's a regular procedure to record
10 all lieutenants or sergeants, right?

11 **A.** No.

12 MR. SULLIVAN: Okay. Your Honor, can we take a
13 five-minute break?

14 MR. PFEIFER: Or if we can approach the bench? I
15 have an issue that I need to bring up to the Court.

16 THE COURT: Let's approach the bench, and I'll see
17 what you're asking for.

18 (At sidebar.)

19 MR. PFEIFER: Commander Corbett is the director of
20 Metro Homicide, and another officer just came in and has said
21 that there's a homicide that has taken place, so Commander
22 Corbett is going to have to leave, with the Court's permission.
23 I didn't want him to get up and walk out.

24 THE COURT: No, that's fine.

25 Any problems with that?

1 MR. SULLIVAN: Did you want to take a break or just
2 want him to walk out?

3 MR. PFEIFER: He can walk out.

4 THE COURT: What I'm going to do, I'm going to let
5 you break.

6 How much time do you need?

7 MR. PFEIFER: Okay.

8 MR. SULLIVAN: Five, ten.

9 THE COURT: Just like passing a gas station.

10 MR. PFEIFER: Yes, Your Honor.

11 MR. SULLIVAN: Yes, that's exactly what we need.

12 MR. PFEIFER: Thank you.

13 THE COURT: All right. We'll do that.

14 (Sidebar concluded.)

15 THE COURT: All right. We're going to take a
16 15-minute break and hope it stays around 15 minutes.

17 The Court will be adjourned for 15 minutes.

18 You all don't have to wait for me to get off here to
19 do what you're going to do.

20 (Brief recess taken.)

21 THE COURT: You can all be seated.

22 MR. PFEIFER: Judge, consistent with why we took the
23 break, there has been a homicide in this community and
24 Commander Corbett has had to leave.

25 THE COURT: That's what I understand. Okay.

1 Are you ready?

2 MR. PFEIFER: Yes, sir.

3 THE COURT: Everybody ready?

4 MR. WALTON: Yes, Your Honor.

5 THE COURT: Go ahead and continue.

6 BY MR. SULLIVAN:

7 Q. Ms. Scott, you're still under oath; you understand that?

8 A. Yes.

9 Q. I want to talk about what the Voice Logger setup is like
10 and how you perform a search on it. To do that, I'm going to
11 refer you to -- I will put it up on the screen here -- I think
12 it's Exhibit 17.

13 Now, is Exhibit 17 a screen shot, if you will, from
14 the computer terminal that is used to do a search of the
15 telephone conversations recorded by the Voice Logger?

16 A. That's correct.

17 Q. And what we're seeing here is one that you've done as a
18 random example, not part of your regular work; is that correct?

19 A. Correct.

20 Q. Okay. And just take me through this here.

21 This area here (indicating), where it says "Search
22 From" and "Set Search Minutes," what does that do? How do you
23 use that when you're trying to find a call to review?

24 A. When I'm looking for a call, I set the search parameter to
25 the day that I'm looking for, and then, usually, if I have an

1 idea of a timeframe, I will, usually, go back about 15 minutes
2 before that timeframe and then I search until about 15 minutes
3 after that timeframe for the "Search To."

4 **Q.** And that search is for all the calls recorded within the
5 timeframe; do I have that right?

6 **A.** It would be anything that is selected then on the next
7 columns.

8 **Q.** (Indicating.)

9 **A.** Yes.

10 **Q.** Would you explain what that means, to select in that area
11 of Exhibit 17?

12 **A.** The ones that are selected are all of the dispatch
13 positions within the 911 call center.

14 **Q.** And by "selected," you're indicating those checks in the
15 boxes?

16 **A.** That's correct.

17 **Q.** Okay. What are the other unchecked boxes?

18 **A.** The first column, 1 through 12, are all radio frequencies
19 that are recorded. In the second column, below "Fire
20 Dispatch," the next block, those are all front desk lines.

21 **Q.** This would be the screen that you referred to earlier that
22 you as assistant director had access to?

23 **A.** That's correct.

24 **Q.** The lines that were the administrative lines that you
25 referred to would not show up for you on the computer screen?

1 **A.** That's correct.

2 **Q.** Now I want to show you Exhibit 18.

3 What does Exhibit 18 show us?

4 **A.** Those are the search results from that search that I
5 conducted.

6 **Q.** So this would show the date of the recorded call
7 (indicating)?

8 **A.** Correct.

9 **Q.** And the time of the recorded call (indicating)?

10 **A.** Correct.

11 **Q.** Would this be the channel (indicating)?

12 **A.** That is the channel on the Voice Logger, yes.

13 **Q.** This is the length of each call (indicating)?

14 **A.** In some, there could be more than one call, but that's the
15 duration of the recording.

16 **Q.** How could you get more than one call in the duration of the
17 recording?

18 **A.** Because this is a voice activated system, if a call taker
19 or any person who used a phone ended a conversation and then
20 quickly answered another line and there was not a significant
21 interruption in their voice, it would continue on and continue
22 to record, so it's not uncommon for that to occur in a busy 911
23 center.

24 **Q.** You might get two calls but one recording?

25 **A.** That's correct.

1 Q. Would you explain to the Court the buttons down here and
2 what this slide bar is (indicating)?

3 A. It's very much just like a tape recorder. You hit
4 "Play" -- once you've selected, at the top, one of the
5 recordings you want to listen to, you hit the "Play" button,
6 and then that will begin to play that recording. You can
7 fast-forward, you can reverse, you can pause, or you can stop,
8 and the slide bar then indicates where -- if you look over to
9 the left of the slide bar where it says "Real," it tells you
10 the elapsed time within that recording.

11 Q. Okay. I want you to focus on one of the duties you
12 mentioned, which was maintenance of the system.

13 Did the system have any problems in the 2010/2011
14 timeframe?

15 A. Yes, it did.

16 Q. Describe those.

17 A. It would crash.

18 Q. So what did it look like when you would come in and see the
19 crash?

20 A. Mostly like what you would see on any normal computer; you
21 might have the blue screen.

22 Q. What did you call it in the communications center?

23 A. The BSOD.

24 Q. Which is the blue screen of death?

25 A. The blue screen of death.

1 Q. That told you what?

2 A. The recording was in a crash -- the logging recording
3 computer was in a crash state, so then, usually, that
4 precipitated having to restart that.

5 Q. After you restarted it, did you have any concerns about the
6 data that you were supposed to capture?

7 A. Absolutely.

8 Q. What were those concerns?

9 A. Whether or not those recordings were captured while that
10 system was crashed. And from looking at that screen, you could
11 not tell how long the computer had been in that state. Since
12 that computer doesn't set somewhere where someone looks at it
13 24 hours a day, seven days a week, there could have been some
14 period of time that it sat in that state.

15 Q. What did you do to determine that?

16 A. Once we brought the logging recorder back up, we would then
17 troubleshoot by selecting a time to search from that we knew it
18 was okay.

19 So, for instance, if I knew, when I left at 5:00 on
20 Friday, that it was okay, and now it's Monday when I come in
21 and it's not, I would go back to Friday, prior to 5:00, and
22 search from then on all of the channels that I had access to,
23 and then I would listen to make sure that I had captured usable
24 voice.

25 Q. All right. So you would click all those boxes?

1 **A.** That's correct.

2 **Q.** You could not click the boxes for the administrative lines
3 when you were the assistant director prior to Karen DePaepe's
4 medical leave?

5 **A.** That's correct.

6 **Q.** Were you the only person who would perform that search for
7 data recovery?

8 **A.** No.

9 **Q.** Who else did?

10 **A.** There were supervisors who would also have the same access
11 that I did that performed that, as well as if Karen found it in
12 a crash state.

13 **Q.** All right. But Karen was the only one who could really
14 search all the lines?

15 **A.** That's correct.

16 **Q.** Okay. So you've got your search, and assume that
17 Exhibit 18 is the result of a search that you performed after a
18 data crash. Okay?

19 **A.** Uh-huh.

20 **Q.** Each one of these rows represents a different recording; is
21 that correct?

22 **A.** That's correct.

23 **Q.** One's highlighted.

24 That means that's the one you're listening to?

25 **A.** Correct.

1 Q. Take me through and describe for the Court what would you
2 do to determine if the data on that particular call that's
3 highlighted was appropriately captured.

4 A. I would hit the "Play" button.

5 Q. And you would be hooked up to headphones?

6 A. A headset, yes.

7 Q. A headset.

8 And what were you listening for?

9 A. Usable voice, voice that was intelligible, not garbled or
10 blank.

11 Q. Obviously, if it was blank, you had a problem.

12 And if you had garbled, would you use the slide bar
13 at all to see if that garbled was throughout the whole
14 conversation?

15 A. I never had any garbled.

16 Q. Okay. So it was either blank or you had usable voice?

17 A. Correct.

18 Q. How long did you have to listen to determine if you had
19 usable voice?

20 A. I listened for a few seconds.

21 Q. After listening, say, to the highlighted for a few seconds,
22 what did you do next?

23 A. I would check a different time. I would check several
24 times for each channel of the Voice Logger. So, for instance,
25 Channel 1, I may search and check one from right after I knew

1 it was okay and then about midway through.

2 So my example I gave of leaving at Friday at 5:00, I
3 may check Friday at 6:00, I might try Saturday around noon, I
4 may try Sunday, and then Monday when I came back to work.

5 **Q.** You were looking to establish where did I lose data, where
6 do I have data?

7 **A.** Right, if I had lost anything; and since I had restarted
8 the system, was I now capturing usable data.

9 **Q.** Okay. I assume that your search for any reason was done
10 with the same process that you just described?

11 **A.** Correct.

12 **Q.** So if a police officer or the prosecutor wants to have some
13 evidence that came in on a 911 line, how does that process
14 start?

15 **A.** Most of the time, we have a dispatch from our
16 computer-aided dispatch that we're able to pull, and we can
17 look at the specific call taker that took that 911 call, and I
18 can look and see what position they were working and what time
19 and date they entered that call, so then that gives me very
20 specific parameters to search.

21 There are also sometimes -- obviously, if you have
22 an accident at a very prominent intersection at 5:00, you're
23 going to get multiple phone calls.

24 So there are also sometimes, in the notes of the
25 call, indications that another call taker took some information

1 on that call. It's not always there, because if the second
2 call taker took information that was the same, obviously we
3 don't have to add another note to that call.

4 **Q.** Okay. Let me back you up a little bit from there.

5 I'm asking if somebody comes to you as the assistant
6 director of the communications center, like somebody from the
7 prosecutor's office, and says, "I need some evidence on a
8 call," do they just come by orally and ask for that or is there
9 a form they have to fill out? How does the process start?

10 **A.** There is a form that they have to fill out.

11 **Q.** What does that form indicate?

12 **A.** It indicates their name, their contact information, what
13 specifically they want, if they want 911 information, if they
14 want radio recordings, if they want administrative, such as the
15 front desk, and case number, incident number, date and time.

16 **Q.** Okay. And that request form then drives your search; is
17 that correct? So as you look at that, that will tell you what
18 you're looking for?

19 **A.** It will give me some general information to start. Then I
20 take that information and plug it into our computer-aided
21 dispatch system to then actually pull the call for service.

22 **Q.** Sometimes you might have to listen to more than one call to
23 figure out if it's what someone has asked for?

24 **A.** That's correct.

25 **Q.** When you do that, do you ever utilize that slide bar to get

1 to a point in the call to determine if there's the information
2 that you're looking for?

3 **A.** No, I do not.

4 **Q.** What do you do?

5 **A.** I just listen.

6 **Q.** Okay. So for searches that were related to data, you
7 listen for a couple of seconds and then move on; do I have that
8 right?

9 **A.** That's correct.

10 **Q.** Okay. If you're listening to a call in the course of
11 trying to determine if there was lost data and you heard
12 something that you believed indicated there was some wrongdoing
13 by somebody in the police department, what is your
14 responsibility upon hearing that?

15 **A.** To report that.

16 **Q.** To report it to who?

17 **A.** Through my chain of command.

18 **Q.** Who would that be, Ms. Scott?

19 **A.** My chain of command would have been Karen DePaepe and then
20 the Services chief and then the chief of police, but that could
21 have varied based on what I had heard.

22 **Q.** And how would it vary?

23 **A.** Obviously, if that potential wrongdoing was Karen DePaepe,
24 I wouldn't report that to Karen. I would have went right to
25 the Services chief.

1 Q. Or if it was --

2 A. Or if it was the Services chief --

3 Q. -- something concerned about the Services chief, you would
4 go directly to the chief of police?

5 A. Correct.

6 Q. How soon after hearing that information would you report
7 it?

8 A. I would do it immediately.

9 Q. Is anybody in the communications department authorized to
10 conduct -- to initiate and conduct their own investigation of
11 what's on a variety of recorded calls for purposes of
12 determining if what you heard was some reportable offense?

13 Are you authorized to initiate your own
14 investigation of a police officer? That's my question.

15 A. No, I don't believe so.

16 Q. Who conducts that investigation for the police department?

17 A. Internal Affairs.

18 Q. Okay. During the course of performing your duties, did you
19 come to recognize the voices of various police officers who
20 worked for the police department?

21 A. Absolutely.

22 Q. How did you come to become familiar with people's voices?

23 A. Part of being a radio dispatcher is that you become
24 familiar with the officers who are your responsibility. Many
25 times, radio conditions are not the best when an officer is

1 trying to communicate with us. They may be out in weather,
2 there may be sirens in the background, they may be struggling
3 with someone. So voice recognition is key to knowing who is
4 asking you for something or giving you information.

5 **Q.** So when you were reviewing data crashes in late 2010 and
6 you were performing the tasks that you just walked us through
7 and you heard for a few seconds a call, is it your experience
8 that people who worked in the communications center could, in
9 just a few seconds, identify who was on that line?

10 **A.** Yes.

11 MR. SULLIVAN: Okay. Can I have a moment,
12 Your Honor?

13 THE COURT: Yes, you may.

14 (Brief pause.)

15 MR. SULLIVAN: No further questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WALTON:

18 **Q.** Good afternoon.

19 **A.** Good afternoon.

20 **Q.** Ms. Scott, can I ask you, first, how many lines go into the
21 police department system in total as an estimate?

22 **A.** Into the system, the Voice Logger system; is that what
23 you're referring to?

24 **Q.** No.

25 How many phone lines go in or out of the department?

1 **A.** I couldn't tell you an exact number. I would say well over
2 a hundred.

3 **Q.** Was the system that was being utilized from 2004 on capable
4 of recording all of those lines?

5 **A.** No.

6 **Q.** Okay. In fact, would the department have to have purchased
7 a much larger system in order to be able to do that?

8 **A.** Correct.

9 **Q.** Now, when you started -- you started working with Karen
10 when, Karen DePaepe?

11 **A.** In 1999, when I was hired.

12 **Q.** Okay. And during the course of the time that you worked
13 with Karen, were part of your duties listening to lines and
14 pulling requested conversations off the system and putting them
15 on cassettes for various reasons from time to time?

16 **A.** From the time I became a supervisor, yes, sir.

17 **Q.** Okay. In terms of the information that came into you, were
18 you aware, during your time there, whether or not Chief Boykins
19 made any changes to the recorded lines during his tenure?

20 **A.** I was not aware.

21 **Q.** Weren't aware one way or another?

22 **A.** No.

23 **Q.** Okay. All of the communications that are recorded on this
24 system, were they recorded 24 hours a day, seven days a week?

25 **A.** That's correct.

1 Q. Okay. And if someone would try to delete that recording,
2 what would happen?

3 A. You can't delete anything on the system. It's an all or
4 nothing. You would have to destroy the entire contents of all
5 recordings, 911, or destroy nothing.

6 Q. So whatever was recorded in 2011 is still on the system
7 itself?

8 A. The system records dually to a hard drive and then to a
9 removable disk at the same time.

10 Q. Okay.

11 A. The system will only go back so far, and I couldn't tell
12 you the exact date that we're at right now, but then we
13 maintain the disks far longer than that.

14 Q. All right. So what's been recorded, based on your
15 experience back in 2010/2011, still exists today?

16 A. Correct.

17 Q. Now, the persons that were in dispatch, they were
18 civilians, as well, right?

19 A. Yes, everyone in dispatch are civilians.

20 Q. And you're not a police officer either?

21 A. No, I'm not.

22 Q. Was it the ordinary course of your business, working with
23 the people in dispatch and yourself, that you would be asked to
24 perform the duties of listening to the lines and obtaining
25 information for others at their request?

1 **A.** Can you repeat that, please?

2 **Q.** Yes. I'll say it in a better way.

3 You weren't a police officer when you were
4 performing these duties of getting information off what was
5 being recorded at the request of other people, such as the
6 prosecutor or another police officer?

7 **A.** I'm not a police officer; you're correct.

8 **Q.** Okay. And is that the ordinary practice that was exercised
9 at the department during the entire time you were there?

10 **A.** Yes.

11 **Q.** So there may be officers involved -- are any officers
12 directly involved in making recordings other than the ones that
13 may have had their own line being recorded?

14 **A.** No officers make recordings out of our system.

15 **Q.** Okay. Now, when this crash occurred, you said that you had
16 to go in and start working to see that all the lines were still
17 being properly recorded; you had to check them?

18 **A.** Correct.

19 **Q.** Now, were you doing that in just your area that was
20 underneath your direction at the time?

21 **A.** I did it to every line I had access to.

22 **Q.** Okay. And who else was involved in checking the system
23 when the crash occurred?

24 **A.** Any supervisor, myself, or Karen.

25 **Q.** So Karen was also involved in that?

1 **A.** Correct.

2 **Q.** Was that something -- was it the responsibility, when a
3 crash occurred of your department, the communications
4 department, to go in and make sure that whatever was being
5 recorded was not being lost?

6 **A.** Yes.

7 **Q.** And that would have been done in the ordinary course of
8 your duties at the department during the entire time you were
9 there?

10 **A.** That's correct.

11 **Q.** Okay. Now, you indicated, in your examination not too long
12 ago, that if you went in to just check to see if the system was
13 capturing these recordings after this crash occurred, that you
14 would only have to listen for a few seconds --

15 **A.** Correct.

16 **Q.** -- in order to determine if there was a problem or not?

17 **A.** Correct.

18 **Q.** And then you could go forward in time and backward in time
19 to double-check that?

20 **A.** Yes.

21 **Q.** Would that be, as far as you know, the same procedure that
22 Karen would follow or the other supervisors would follow in
23 order to determine whether or not the crash had saved or not
24 saved the recordings?

25 **A.** Yes, to the best of my knowledge.

1 Q. Okay. Now, you were also asked if -- let me just ask you
2 this: From time to time, in the ordinary course of your duties
3 and Karen's duties, as well, from your own personal knowledge,
4 not only may you be asked by a police officer to find
5 information on recorded lines and obtain it for them, but you
6 might be asked by a prosecutor to do the same thing?

7 A. That's correct.

8 Q. And from time to time, did the Indiana State Police also
9 come in and ask for information on the recorded lines that you
10 were required to obtain for their benefit?

11 A. I was never involved in that, but I do know of that.

12 Q. Was Karen the one involved with that?

13 A. Correct.

14 Q. Usually, that was at the direction of the chief?

15 A. I would assume.

16 Q. Also, when the media would make FOIA requests for certain
17 information, would that involve Karen, as well?

18 A. Correct.

19 Q. Are you aware, from your own personal knowledge, that Karen
20 may have been asked by the media or by her supervisors to go
21 into the recorded lines to obtain information that the media
22 had requested?

23 A. Correct.

24 Q. Now, you were asked if you heard something on the line
25 amounting to improper conduct.

1 You're placed in a position at that point in time to
2 make a judgment?

3 **A.** That's correct.

4 **Q.** You wouldn't just listen to a conversation -- in your own
5 judgment, if you're hearing improper conduct, you wouldn't
6 listen to just a couple seconds of that and then stop, would
7 you?

8 **A.** I don't really know how to answer that.

9 **Q.** Each situation may be different?

10 **A.** Correct.

11 **Q.** Before you're going to report improper conduct of an
12 officer, for example, you would want to make sure that, in your
13 own judgment, what you were hearing was correct?

14 **A.** Absolutely.

15 **Q.** So however long that took for you to be sure of what you
16 were hearing and what you would report, you would take the
17 necessary time before you would report it to anybody?

18 **A.** Correct.

19 **Q.** That would just be your due diligence and a call for your
20 judgment in your position at that time?

21 **A.** Correct.

22 **Q.** Same with Karen?

23 **A.** Correct.

24 **Q.** To your knowledge, during the entire time you've worked
25 there, are you ever aware of any officer that came up and asked

1 if his line was being recorded, whether or not that was ever
2 hidden by the officer from anyone?

3 **A.** I don't have any knowledge of that.

4 **Q.** Are you aware of different officers that would come forward
5 and ask if their line was being recorded and they were told
6 whether it was or wasn't?

7 **A.** Yes.

8 **Q.** That happened how often?

9 **A.** I couldn't tell you. I know there have been officers who
10 came to me and asked if a line was recorded because they wanted
11 something pulled from that line, and then I would tell them it
12 wasn't recorded.

13 **Q.** And the same officer may come to you saying, you know,
14 "Would you check my line and see if you could get this
15 information for me," and the line was, in fact, recorded, so
16 you were able to obtain it?

17 **A.** That wouldn't have been my responsibility until after Karen
18 went on her medical leave, as I would not have had access, so I
19 would have had to refer them to Karen.

20 **Q.** All right. But you're aware that that has occurred and you
21 did, in fact, refer people to Karen before?

22 **A.** I have told officers that the line that they were inquiring
23 about was not recorded, yes.

24 **Q.** Are you aware of any instance at any time since you started
25 working there back in 1999 whether or not any of the

1 information -- any request of any officer at any time, if they
2 had asked if their line was being recorded, where that
3 information would not -- where they would not have been told by
4 you whether it was or wasn't?

5 **A.** No. I mean, if I knew --

6 **Q.** If you knew, you would tell them?

7 **A.** Correct, unless someone had specifically told me not to,
8 such as Karen or the chief.

9 **Q.** All right. In your experience, during the entire time you
10 have worked there, has either Chief Fautz or Chief Boykins ever
11 told you not to tell an officer that his line was or was not
12 being recorded?

13 **A.** No.

14 **Q.** So, in your own experience, if an officer would have asked
15 you if his line was being recorded, you would have told him
16 "yes" or "no"?

17 **A.** Correct.

18 **Q.** Do you know of your own personal knowledge whether or not
19 that was true with Karen DePaepe?

20 **A.** I have no knowledge.

21 **Q.** You don't know if she did or didn't?

22 **A.** I don't know if she did or didn't.

23 **Q.** Are you aware of any other chief ever being asked by an
24 officer whether or not his line was being recorded or not,
25 whether or not the chief would have told him it was or wasn't?

1 **A.** I don't know.

2 **Q.** All right. In terms of the testimony that's happened in
3 this case so far, Barb Holleman has testified by way of
4 deposition, and in her deposition -- can you tell us, first,
5 was she the person responsible for changing numbers, if an
6 officer would ask, during the time that you were there?

7 **A.** She was responsible for the phone system, yes.

8 **Q.** She would not be the one responsible for recordings,
9 though?

10 **A.** No.

11 **Q.** Who would that be?

12 **A.** Karen.

13 **Q.** Would that be at someone's specific direction?

14 **A.** Yes.

15 **Q.** Who?

16 **A.** The chief of police.

17 **Q.** All right. In your experience, only the chief of police
18 could dictate for the department what lines would or would not
19 be recorded?

20 **A.** Yes.

21 **Q.** In this case, are you aware that, according to Barb
22 Holleman's testimony, that she was asked by officers hundreds
23 of times to change numbers to different officers' physical
24 locations?

25 **A.** I don't know anything about that.

1 Q. Would that surprise you if that was her testimony?

2 A. No.

3 Q. In your opinion, would it be a normal activity for a police
4 officer to want to keep the number that he or she had while
5 they were in their office and take it to their next office for
6 continuity?

7 A. I could see why they would.

8 Q. Okay. And in this case, were you aware that when Steve
9 Richmond was promoted to chief of the Investigative Division in
10 February of 2010 that he had asked that his line be -- his old
11 number go into his office by Barb?

12 A. I am aware of that now.

13 Q. Okay. And that's part of where that list came up that you
14 looked at earlier in your testimony, right?

15 A. That's correct.

16 Q. The list of the recorded lines?

17 A. Correct.

18 Q. And were you aware that Barb testified that, at the request
19 of the chief of the Investigative Division in February of 2010,
20 she did put his line 7473 into the chief's office? Are you
21 aware of that?

22 A. I am now.

23 Q. And then she put -- at the request of the chief of the
24 Investigative Division, Steve Richmond, the number that was in
25 the chief's office, 6031, was put into his old office as

1 captain of the Investigative Division?

2 **A.** Yes, I am aware of that now.

3 **Q.** Okay. Was there a delay after Steve Richmond was actually
4 promoted and took the office, which I understand was in
5 February of 2010, to the time Brian Young was promoted and
6 became captain of the Investigative Division?

7 **A.** I don't know.

8 **Q.** Okay. It is an uncontroverted fact in this case -- I want
9 you to look at that list of recorded lines that you had before
10 there, if you have it in front of you. I think it was
11 Exhibit 9.

12 **A.** (Witness complies.)

13 **Q.** It's an uncontroverted fact in this case that the lines
14 that were being recorded, as set out in Exhibit 9, were the
15 lines that were being recorded at the request of Chief Fautz
16 beginning in 2004.

17 **A.** Okay.

18 **Q.** Okay. And in looking at that exhibit, you'll see that
19 245-6031 began being recorded in 2004. Do you see that?

20 **A.** I can see that it's on this list, yes.

21 MR. SULLIVAN: I'm sorry. I don't think Exhibit 9
22 says it began to be recorded in 2004.

23 MR. WALTON: Well, we'll get there.

24 MR. SULLIVAN: Then I object as no foundation for
25 that.

1 MR. WALTON: And I said it was an uncontroverted
2 fact that the lines listed on Exhibit 9 have been the lines
3 that have been recorded by the department since 2004.

4 Do you have any evidence that would say that's not
5 true, before I proceed, Mr. Sullivan?

6 MR. SULLIVAN: One second, Mr. Walton.

7 What stipulation are you referring to, Mr. Walton?

8 MR. WALTON: No stipulation.

9 I'm saying it's an uncontroverted fact that the list
10 of recorded lines were not changed from when Chief Fautz
11 ordered the lines to be recorded in 2004, and Chief Boykins has
12 indicated that he never made any changes to the recording
13 system, that those same lines were continued to be recorded.

14 MR. SULLIVAN: I object to the characterization that
15 it's an undisputed fact that those lines were recorded from
16 2004. That's what I'm objecting to, not that they were
17 objected -- or not that those lines were recorded during Chief
18 Fautz's tenure and that Chief Boykins made no changes, but that
19 those lines were recorded starting in 2004. That's my
20 objection. There's not a stipulation as to that.

21 MR. WALTON: Is there any evidence that they weren't
22 starting to be recorded at Chief Fautz's direction in 2004,
23 that this is the list of recorded lines?

24 MR. SULLIVAN: Yes, this is a list --

25 THE COURT: Let's do this. Let's take 2004 out and

1 just say it started with Chief Fautz --

2 MR. WALTON: Okay, Chief Fautz.

3 THE COURT: -- and it was not changed by Chief
4 Boykins; is that correct? Would you agree with that?

5 MR. SULLIVAN: I believe so, yes, Your Honor.

6 THE COURT: Okay. Then if you want to develop that
7 further, develop it through something that he can look at.

8 MR. WALTON: All right. Fair enough.

9 **Q.** Assuming that that's true then, that it was the practice of
10 Chief Fautz to record these lines, and 6031 was being recorded
11 starting then, I want you to now look back at Exhibit 43, which
12 is the resumé of Rick Bishop.

13 MR. PFEIFER: I'm just going to object to the form
14 of the question. The question has an assumption in it that it
15 was Chief Fautz's practice of recording this line, and there's
16 absolutely no testimony, in that there is nothing in the record
17 to support that assumption.

18 MR. SULLIVAN: I'll join in that objection,
19 Your Honor.

20 THE COURT: Could you rephrase your question?

21 MR. WALTON: Sure. I don't remember what I said.

22 THE COURT: Just ask a different question. I think
23 the point they're objecting to is the assumption that that
24 question seems to be making, so just rephrase your question.

25 MR. WALTON: All right.

1 Q. I asked you to look at Exhibit 43, the resumé of Rick
2 Bishop that's in evidence.

3 A. Okay.

4 Q. Do you see that?

5 A. I do.

6 Q. And do you see that Rick Bishop was in the Detective Bureau
7 as captain from 10-3-02 to 1-1-05? Do you see that?

8 A. I do.

9 Q. I want you then to look at Exhibit 44, which is Rick
10 Bishop's card.

11 A. (Witness complies.)

12 Q. Do you see that?

13 A. Yes, I do.

14 Q. And his number was 6031 when he was captain in the
15 South Bend Police Department of the Office of Professional
16 Standards.

17 A. I see that.

18 Q. And then, if you look at Exhibit 45, Rick Bishop's card, he
19 was division chief of the Investigative Bureau, with 6031 as
20 his number, according to that card.

21 A. Yes, I do see that.

22 Q. Okay. If Chief Fautz had ordered 6031 to be recorded, and
23 based upon what you know in this case, would 6031 have been
24 continuously recorded as long as Rick Bishop had that number?

25 MR. PFEIFER: Object to the form of the question.

1 There's no evidence that Chief Fautz ordered 6031 to be
2 recorded, and there will be no evidence that he ordered that
3 number to be recorded, so it's an improper hypothetical.

4 MR. WALTON: Your Honor, Rick Bishop testified that
5 he asked Chief Fautz to record his number, and Chief Fautz said
6 he recorded his number.

7 THE COURT: I assume it's in a deposition, correct?

8 MR. WALTON: Yes.

9 THE COURT: Is there a disagreement with that?

10 MR. PFEIFER: No, but the way the question was
11 formed, the form of the question, is what I object to. If he
12 wants to get into the specifics, as he just stated, then I have
13 no objection to the question. But whenever he starts talking
14 about Chief Fautz ordering certain lines to be recorded, that's
15 when I've got a problem.

16 The facts are the facts, and I don't think there's a
17 disagreement about the facts. I have a disagreement with the
18 way the question is phrased as it relates to those facts.

19 MR. SULLIVAN: Your Honor, may I be heard on this,
20 as well?

21 THE COURT: Yes.

22 MR. SULLIVAN: I think one of the confusions -- and
23 I think it bears some ruling or discussion on your part so that
24 the witness is not confused -- Mr. Walton has phrased it as
25 Chief Fautz ordered that number to be recorded. The testimony

1 by Rick Bishop was -- and we anticipate will be -- that Rick
2 Bishop asked to have his line recorded, and he was assigned
3 that number. The difference between ordering a number to be
4 recorded for all time versus allowing someone with an assigned
5 line to be recorded is what I don't want to be confused.

6 MR. WALTON: I can rephrase.

7 Q. Ms. Scott, assuming that Rick Bishop asked for his line to
8 be recorded and the list that you saw with 6031, having his
9 line on it as one of the recorded lines under Chief Fautz's
10 administration, would it be your testimony, based upon how you
11 know that system works, that Rick Bishop's line would have been
12 continuously recorded for the five or six years that he was in
13 those different positions until he was demoted in 2010?

14 MR. SULLIVAN: I'll add an additional objection.
15 She already testified that she didn't have access to the
16 Centrex assigned lines during that period of time.

17 THE COURT: That may be her answer, but I think the
18 question can stand, if she understands it.

19 If you understand the question, you can answer.

20 THE WITNESS: I think I understand it.

21 I would say, yes, as long as 6031 was assigned
22 to him, 6031 would be what we were capturing, unless there
23 was a change made. 6031, if it was assigned to someone
24 else, then, obviously, we would not have been capturing Rick
25 Bishop.

1 BY MR. WALTON:

2 Q. All right. So when Brian Young came into that office in
3 2010 -- we've learned that that line was continuing to be
4 recorded -- 6031 was continuing to be recorded under the
5 Reliance system?

6 A. Correct.

7 Q. Okay. Are you ever aware of any order of any chief to not
8 record that line?

9 A. No.

10 Q. Are you aware of whether or not Brian Young ever came to
11 you and asked you that his line not be recorded?

12 A. He did not come to me and ask me that.

13 Q. Did he ever come to you and ask you if his line was being
14 recorded?

15 A. Yes, he did.

16 Q. And when was that?

17 A. Sometime after January of 2012.

18 Q. So about two years after he went into that position?

19 A. I'm not certain of when he went in there, but --

20 Q. Assume he came into the position of captain in March of
21 2010.

22 A. Yes.

23 Q. Okay. Karen DePaepe, in your opinion, as the keeper of the
24 records for the communications department, did she have
25 authority to conduct -- to listen to lines at the request of

1 the chief?

2 **A.** Yes.

3 **Q.** And also at the specific request of other officers,
4 prosecutors, and others?

5 **A.** Yes.

6 **Q.** And was it her business duty, in the ordinary course of her
7 practice while you were there, to perform those tasks?

8 **A.** Yes.

9 **Q.** Were officers permitted to have personal cell phones?

10 MR. SULLIVAN: Objection, foundation, as to what the
11 South Bend Police Department's duty manual was for individual
12 officers. There's been no foundation laid that she would know
13 that.

14 MR. WALTON: I'm trying to lay the foundation.

15 THE COURT: Ask her if she knew.

16 BY MR. WALTON:

17 **Q.** In your experience, were officers permitted to have their
18 own personal cell phones?

19 **A.** Yes.

20 **Q.** And those cell phones, based on your experience, weren't
21 connected to your system whatsoever?

22 **A.** No, they were not.

23 **Q.** So if an officer wanted to have any type of conversation
24 with anybody at any time from 2010 to 2012, they could do it on
25 their own personal cell phone?

1 **A.** Correct.

2 **Q.** And you wouldn't have the ability to capture it?

3 **A.** No.

4 **Q.** Were you ever made aware at any time that the recording
5 system itself was ever used for the purpose of intimidating
6 anybody within the department?

7 **A.** No.

8 **Q.** Were you ever aware whether or not the recording system, at
9 any time you were there, was ever made to trick anybody within
10 the department?

11 **A.** No.

12 **Q.** Were you ever aware that the recording system, at any time
13 while you were there, was there to spy on anybody within the
14 department?

15 **A.** No.

16 **Q.** In fact, during the entire time you were there, from 1999
17 on, as far as you're aware, that never occurred?

18 **A.** Correct.

19 **Q.** Were you ever aware of the reasons why Chief Fautz chose to
20 record the lines that he ordered recorded?

21 **A.** I was not.

22 **Q.** That would be Karen?

23 **A.** Correct.

24 **Q.** And what about Chief Boykins?

25 **A.** Not aware.

1 Q. That would be Karen?

2 A. Correct.

3 MR. WALTON: Give me just a second, Your Honor.

4 (Brief pause.)

5 BY MR. WALTON:

6 Q. When you looked at the list of lines that were being
7 recorded, Exhibit 9, and you looked at the administrative
8 numbers that were being recorded, you said you weren't
9 surprised by any of them; is that right?

10 A. Correct.

11 Q. Why?

12 A. I knew there were lines that were recorded. I didn't know
13 what they were specifically, but it made sense.

14 Q. Okay. In your experience there at the department,
15 including officers and the civilians, was it common knowledge
16 that lines coming into the department and going out of the
17 department were recorded, at least some lines?

18 A. Yes.

19 Q. Was it your job, and Karen's job as director of
20 communications, to continue to maintain the system and make
21 sure it was operating properly?

22 A. Yes, it was.

23 Q. Your job to make sure you maintained it in order to capture
24 evidence, anonymous tips, complaints of officers, and things of
25 that nature?

1 **A.** Correct.

2 **Q.** Are you aware of any times when -- well, strike that.

3 When that crash occurred in 2010 to 2011, did you
4 lose some data?

5 **A.** I don't remember. I don't know that I personally found any
6 lost data, but I couldn't tell you that there was no lost data.
7 I can't recall.

8 **Q.** And who asked, at that time, for either you or Karen to go
9 in and check the lines to make sure they were still being
10 properly recorded after the system was changed?

11 **A.** No one asked us.

12 **Q.** Okay. Were the technicians -- do you work with the
13 technicians that were doing the work?

14 **A.** I don't believe any technicians came during that time.

15 **Q.** Okay.

16 **A.** We did the troubleshooting.

17 **Q.** All right. Who made the corrections to the system, the IT?

18 **A.** I'm not certain what you mean by "corrections."

19 **Q.** Well, there was something that caused it to crash.

20 **A.** Uh-huh.

21 **Q.** Who made the technical changes to that?

22 **A.** We had some hard drive failures, and the vendor itself --
23 I'm not certain if they came or they sent parts, and then our
24 IT staff changed them out. I couldn't tell you that for
25 certain.

1 **Q.** In your memory, would it have been either the vendor or
2 someone from IT that had come to you and Karen and asked you,
3 at that time, to make sure the lines that you wanted to be
4 recorded were functioning properly after the corrections?

5 **A.** No, no one asked me that.

6 **Q.** You were doing that because it was something in the
7 ordinary course of your business; is that right?

8 **A.** Correct, before any modifications. As soon as we brought
9 the system back up, we would do that.

10 MR. WALTON: All right. Just a second, Your Honor.

11 (Brief pause.)

12 MR. WALTON: That's all the questions I have. Thank
13 you.

14 THE COURT: Mr. Pfeifer.

15 CROSS-EXAMINATION

16 BY MR. PFEIFER:

17 **Q.** Ms. Scott, did you learn, during the course all of this,
18 that Captain Young's line had been mistakenly recorded?

19 **A.** Yes, I did.

20 **Q.** You talked about a meeting in October of 2011 where there
21 was going to be this change from the Centrex system to the VoIP
22 system, correct?

23 **A.** Yes.

24 **Q.** You were present at that meeting?

25 **A.** I was.

1 Q. I believe one of the exhibits, Exhibit 9, the third page of
2 Exhibit 9, that was one of the documents that you took to the
3 meeting, correct?

4 A. I went and retrieved it to bring to the meeting, yes.

5 Q. And just so we're clear, you retrieved this document from
6 Karen DePaepe's computer, correct?

7 A. That's correct.

8 Q. Because, I think you told us, you had had a phone
9 conversation with her, she was on medical leave, and she had
10 told you to go to her computer and told you, I assume, where
11 you could retrieve this document?

12 A. That's correct.

13 Q. And then you took that document to the October 2011
14 meeting, correct?

15 A. Correct.

16 Q. So this document that we're looking at, Exhibit 9, that's
17 not a document that you generated, correct?

18 A. No, sir.

19 Q. That was generated from Karen DePaepe's computer?

20 A. Correct.

21 Q. Now, let's talk about that October 2011 meeting.

22 It's true, is it not, that, at that meeting, that's
23 the first time that Brian Young became aware of the fact that
24 his phone line was being recorded, correct?

25 MR. WALTON: Objection. She wouldn't know when

1 Brian Young -- the first time he knew or not knew.

2 MR. PFEIFER: If she knows, she can answer.

3 THE COURT: I will let her answer if she knows.

4 A. I don't know.

5 BY MR. PFEIFER:

6 Q. Was there a discussion at that meeting about Brian Young's
7 line being recorded?

8 A. Yes.

9 Q. Tell us about that discussion.

10 A. As we went individually through each line, we were asked,
11 you know, "Whose line is this? Whose line is this? Whose line
12 is this?"

13 We got to that 6031, Captain Young's line, and the
14 question was posed -- I'm not certain if it was by Chief
15 Horvath or Captain Phil Trent -- "Does Brian Young know that
16 his line is recorded?"

17 To which I replied, "I don't know."

18 Q. Did Phil Trent then come to you, at some point in time
19 after that meeting, with respect to a request for the stopping
20 or the cessation of that recording on Brian Young's phone line?

21 A. Yes. As soon as I made that statement, Captain Trent left
22 the meeting and went to Captain Young's office. A bit after
23 the meeting was adjourned, I saw Captain Trent in the hallway,
24 and that is when he approached me concerning that line.

25 Q. And what was said?

1 **A.** He told me that Captain Young did not know that his line
2 was recorded and that it needed to be stopped, in his words,
3 "like yesterday."

4 **Q.** And what was your response to Captain Trent?

5 **A.** I told him I did not know if that was possible, if I had
6 the ability to disengage, or record, a line from the software,
7 and that I would have to check and I would get back to him.

8 **Q.** Who were you going to check with?

9 **A.** I was going to go log into the voice recorder to see if
10 that function was even there.

11 **Q.** Did you log into the voice recorder?

12 **A.** I did.

13 **Q.** Did you determine if that function was there?

14 **A.** Right. I could not disable the recording of the line from
15 the software.

16 **Q.** Did you go in and talk to Chief Boykins at all about the
17 cessation of the recording of Brian Young's private line
18 because he had made that request?

19 **A.** I did not.

20 **Q.** Is there a reason why you did not?

21 **A.** After I left the office, I, again, ran into Captain Trent.
22 At which time, I informed him that I was not able to disengage
23 that recording; and, upon further thought, that, in fact, it
24 would have to be Chief Boykins who would have to make that
25 determination and that we would, in fact, have to contact a

1 vendor to come in and disable that line.

2 Q. Was any of that done, to your knowledge?

3 A. No.

4 Q. So did you formulate an impression -- based upon the
5 exchange or the dialogue that was taking place at the meeting
6 in October of 2011, and the subsequent conversations with
7 Captain Trent, did you formulate an impression, in your mind,
8 that Captain Young did not know his phone line being was being
9 recorded?

10 A. Yes.

11 Q. What was that impression?

12 A. That he did not know.

13 Q. You told us that his line had been mistakenly recorded.

14 Do you remember saying that?

15 A. I do.

16 Q. If you would, tell us the basis for that statement.

17 A. It was a conversation with Karen, after she had made
18 certain discoveries during one of the crashes, where she told
19 me that that is what she discovered in troubleshooting the
20 lines, that there was a voice that was not Steve Richmond, it
21 was Captain Young.

22 Q. And when was this conversation?

23 A. I couldn't tell you for certain.

24 Q. The conversation would have been long before October of
25 2011?

1 **A.** Yes.

2 **Q.** The conversation would have been something that Karen
3 DePaepe relayed to you that she had learned when she was doing
4 this troubleshooting, correct?

5 **A.** Correct.

6 **Q.** That's the troubleshooting that you're talking about where
7 all you have to do is go into -- and I believe the exhibit is
8 17; that's easier for you to read now.

9 The troubleshooting you're talking about, you had
10 the capacity to perform certain troubleshooting, correct?

11 **A.** Yes. I did not have access to everything.

12 **Q.** You did not have access to the private lines that were
13 identified on the list that was taken to the October meeting,
14 Exhibit 9; is that correct?

15 **A.** Correct.

16 **Q.** So you would not have had access to the front desk phone
17 lines, correct?

18 **A.** I had access to the front desk.

19 **Q.** Okay. You would not have had access to the chiefs'
20 lines --

21 **A.** Correct.

22 **Q.** -- to perform troubleshooting, correct?

23 **A.** Correct.

24 **Q.** Only Karen had that access?

25 **A.** Correct.

1 Q. You would not have had access to the records or the records
2 director, correct?

3 A. Correct.

4 Q. Only Karen would have had that access?

5 A. Correct.

6 Q. And then the three lines that are in the Detective Bureau,
7 you would not have had access to those?

8 A. Correct.

9 Q. Only Karen had access to those lines?

10 A. Correct.

11 Q. And the troubleshooting, then, that you're talking about,
12 when the system crashes, is to, basically, go to the computer
13 screen and click on the right side the numbers that you want to
14 check, you put the parameters in and, in a few seconds, you can
15 make a determination as to whether recorded phone conversations
16 had been lost, correct?

17 A. Well, the entire process would take longer than a few
18 seconds.

19 Q. Few seconds per individual line?

20 A. Correct.

21 Q. And then you would go forward in time or back in time just
22 to kind of double-check to make sure that the recorded
23 information was not lost at a different time; is that fair?

24 A. We would check different time slots because we were unaware
25 of when this crash actually occurred, so, yes, there were

1 different samplings taken.

2 **Q.** The point is -- and I think you've established this -- the
3 point is, you just have to listen to an individual line for a
4 couple of seconds to make sure that you didn't lose any
5 recording capacity, correct?

6 **A.** Yes, that's what I did.

7 **Q.** And the procedure that Karen would follow would be the same
8 procedure, I think you told us, that you would follow to make
9 that troubleshooting determination on individual lines,
10 correct?

11 **A.** I can't tell you what procedure Karen did, but I would
12 assume so.

13 **Q.** Okay. So the troubleshooting that Karen did that caused
14 her to tell you that Brian Young's line was being recorded was
15 back in the January or February timeframe of 2011?

16 **A.** I can't recall.

17 **Q.** You said, in response to a question that Mr. Walton asked,
18 that it was common knowledge that there were lines that were
19 recorded in the police department, correct? Do you remember
20 that topic of conversation?

21 **A.** Yes.

22 **Q.** It was common knowledge that the front desk phone lines or
23 the function of the front desk, that those lines, that
24 function, was recorded, correct?

25 **A.** Yes.

1 Q. That was common knowledge in the police department,
2 correct?

3 A. Correct.

4 Q. It was common knowledge that the function of the
5 communications room, the 911 calls, that those calls or those
6 lines were recorded? That was common knowledge among the
7 police officers, correct?

8 A. Yes.

9 Q. That function of recording the 911 calls, that was common
10 knowledge, that those lines were recorded, correct?

11 A. Yes.

12 Q. But the capacity of the recording system, I think you said
13 on direct examination, it had the capacity to record up to 60,
14 correct?

15 A. Somewhere. That's a guesstimate.

16 Q. But the South Bend Police Department did not purchase the
17 necessary component parts of that system to allow for 60 lines
18 to be recorded, did it?

19 A. That's correct.

20 Q. It was something less than 60?

21 A. Yes.

22 Q. And that 60 -- well, was it not 39, and then it went to 48,
23 if you know?

24 A. I don't know. I know that we have 48. I don't know what
25 it went from or any of that.

1 Q. And the 48 -- okay. You know now it's 48?

2 A. Correct.

3 Q. And the 48 lines that the system had the capacity to record
4 would include all of the communication lines, correct?

5 A. Positions in the communications center, yes.

6 Q. All of the front desk lines?

7 A. Correct.

8 Q. All of the radio traffic, correct?

9 A. Correct.

10 Q. And I think probably included the 911 calls; that's
11 basically the same thing, correct?

12 A. That's the same as the positions.

13 Q. So after the recording of all of those functions in the
14 South Bend Police Department, there were only a handful of
15 slots or positions available that could record private lines;
16 isn't that fair?

17 A. We were limited.

18 Q. Okay. And I think you've told us that the recording of the
19 private lines was being done by the direction of the chief of
20 police?

21 A. Correct.

22 Q. At least that's what Karen said to you?

23 A. That's correct.

24 Q. Okay. You never dealt with the chief of police in terms of
25 recording individual private lines, so you would have to rely

1 upon what Karen said to you; is that fair?

2 **A.** Yes.

3 **Q.** Okay. So if -- and I think you told us that Chief Fautz --
4 excuse me -- Chief Boykins, when he became the chief, basically
5 followed the same procedures and the same practice as Chief
6 Fautz, correct, at least that's what you were told?

7 **A.** That's what I was told, yes.

8 **Q.** Were you told that, before a private line could be
9 recorded, it was Chief Fautz's position and policy that the
10 person who was assigned to that line would need to be told that
11 the line was going to be recorded?

12 **A.** I'm unaware of anything.

13 **Q.** Were you aware -- were you in this position when Chief
14 Hemmerlein was the chief of police?

15 **A.** I was not.

16 **Q.** Or Chief Gunn?

17 **A.** I was not.

18 **Q.** Or Chief Hurley --

19 **A.** Chief Hurley --

20 **Q.** -- which is even before?

21 **A.** Well, I was going to say Chief Hurley the second time.

22 **Q.** Good point. Good point.

23 The first time?

24 **A.** No.

25 **Q.** Okay. Well, you were there when Chief Hurley was there the

1 second time, correct?

2 **A.** Correct.

3 **Q.** That was in between Chief Boykins and Chief Teachman?

4 **A.** Correct.

5 **Q.** So it was not -- at least to your knowledge, based upon
6 what Karen DePaepe told you, it was not a common practice and
7 procedure of the South Bend Police Department to record every
8 private line that was assigned to an officer; isn't that true?

9 **A.** That was my understanding, once I became involved with the
10 recording system, yes.

11 **Q.** Because the system was physically not capable of recording
12 every private line, correct?

13 **A.** Correct.

14 **Q.** Once you became involved, did you ever learn that it was
15 the position of Chief Fautz that private lines could only be
16 recorded if the request for the recording came from the person
17 that the private line was assigned to?

18 **A.** I was not aware of that.

19 **Q.** Would that surprise you?

20 **A.** No.

21 **Q.** I just want to be clear.

22 You were asked some questions by Mr. Walton about
23 access that officers or the prosecutor's office would have to
24 retrieve the recording of conversations that were recorded on
25 the various lines, correct?

1 **A.** Correct.

2 **Q.** That form that we're talking about and the retrieval of
3 that recorded information was basically the 911 calls and the
4 calls that were recorded in the communications office, correct?

5 **A.** No.

6 **Q.** What else did it include?

7 **A.** The front desk.

8 **Q.** Okay. The front desk.

9 And there was a form that had to be completed for
10 the front desk, the communications, the 911 calls, correct?

11 **A.** Correct.

12 **Q.** There was no form where a police officer could come and say
13 to you, "I would like for you to retrieve the recording of
14 6031, Captain Brian Young's phone conversations," was there?

15 **A.** Not that I'm aware of.

16 **Q.** In fact, requests like that, to provide a copy of a
17 recording of a line that was knowingly being recorded, those
18 requests did not come from the prosecutor's office, did they?

19 **A.** I don't know. I wasn't involved in those.

20 **Q.** But as long as you know -- your involvement, they did not
21 come through you in any way, correct?

22 **A.** I was never involved in them.

23 **Q.** Okay. The recording system that exists at the South Bend
24 Police Department, does it have any type of noise, like a beep,
25 that the listener can hear to know that the line is being

1 recorded?

2 **A.** No, it does not.

3 **Q.** You understand -- that was not a very -- that was a poorly
4 worded question, I admit.

5 Do you understand what I'm talking about?

6 **A.** Yes. I've heard that before.

7 **Q.** Okay. The South Bend system does not have that beep,
8 correct?

9 **A.** That's correct.

10 **Q.** And that beep is basically to let the person who's on the
11 line, who is using the line -- the line is assigned to him or
12 her -- to let that person know that the recording is taking
13 place, correct?

14 MR. WALTON: Objection, Your Honor. It assumes a
15 fact not in evidence.

16 MR. PFEIFER: If she knows.

17 MR. WALTON: We don't have that kind of system.

18 THE COURT: Well, she can answer, if she knows. If
19 they don't have the system, she probably doesn't know.

20 You can answer the question.

21 **A.** I don't know.

22 BY MR. PFEIFER:

23 **Q.** Did you learn that it was actually Steve Richmond's phone
24 line, when he became the division chief of the Investigative
25 Division, that was to have been recorded, that is, 7473?

1 **A.** Did I learn that; is that what you're asking me?

2 **Q.** Yes.

3 **A.** Yes.

4 **Q.** And when the switch was made by Barb Holleman to switch the
5 line that Steve Richmond had, 7473, from his old office to his
6 new office, that 6031 then went to the office that he vacated,
7 correct?

8 **A.** That's correct.

9 **Q.** And in the process of making that switch, the recording of
10 6031, which had been requested by Captain Bishop when he was in
11 the Internal Affairs section, continued?

12 **A.** Correct.

13 MR. PFEIFER: If I could have a minute, Your Honor?

14 (Brief pause.)

15 MR. PFEIFER: I'll pass the witness.

16 THE COURT: Okay. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. SULLIVAN:

19 **Q.** Just a little follow-up, Ms. Scott.

20 You, as assistant director, Karen DePaepe, as
21 director, and any supervisors, all would share in the task of
22 taking these forms that were requesting recordings and
23 performing searches? Did I hear that correctly?

24 **A.** That's correct.

25 **Q.** Okay. The vast majority of those requests, during your

1 period of time as a supervisor, assistant director, and
2 director -- please describe for the Court -- what does the bulk
3 of that work involve, requests from who?

4 **A.** The prosecutor's office.

5 **Q.** And what would you say is sort of next in line after the
6 prosecutor's office?

7 **A.** Investigators.

8 **Q.** In the South Bend Police Department?

9 **A.** Correct.

10 **Q.** Okay.

11 **A.** Well --

12 **Q.** I'm sorry. Go ahead.

13 **A.** Or in Family Violence. Sometimes there are differing
14 officers assigned to that unit, so it could be an officer
15 from --

16 **Q.** So if we took the prosecutor's office and investigators,
17 either in the police department, investigators in Family
18 Violence or Metro Homicide, or anybody from some of the other
19 jurisdictions who might be conducting investigations, if we
20 took all of the requests that related to -- that came from the
21 prosecutors or investigators, about what percentage of the
22 requests would that occupy?

23 **A.** Probably 90 percent.

24 **Q.** Of the remaining 10 percent, what are they?

25 **A.** Internal Affairs, quality assurance, and those aren't

1 really requests. That's something we perform.

2 **Q.** Let's stick to requests from somebody outside department
3 communications.

4 **A.** FOIA, Freedom of Information Act requests; Internal
5 Affairs; police officers involved in the initial call of
6 something often will ask. Maybe they're in a pursuit, and they
7 want to listen to their pursuit so that their report is
8 accurate.

9 **Q.** That would be radio traffic?

10 **A.** Radio traffic, yes; sometimes phone calls that have to do
11 with the case that they're typing.

12 **Q.** Of the requests that are in that final 10 percent, how many
13 of them are asking for, in your experience -- you were a
14 supervisor, assistant director, and now you're the director.
15 What percentage of those requests -- and we're talking about
16 that small sliver now, okay -- what percentage of those
17 requests wanted 911 or front desk traffic?

18 **A.** 99 percent.

19 **Q.** In your experience as a supervisor, assistant director, or
20 director, was there ever a request for a recorded conversation
21 on one of the division chief's lines?

22 **A.** Yes.

23 **Q.** And what were the circumstances?

24 **A.** There were some -- there was a person that they were
25 pursuing a case against that was filling people's -- some of

1 the chiefs' voicemails up. We pulled -- I didn't personally,
2 but I knew of it, that they were pulling that information.

3 **Q.** That was a request from inside the police department?

4 **A.** Correct.

5 **Q.** Okay. Remember, I'm talking about that sliver of requests
6 that come from outside.

7 **A.** Right. I can't think of any.

8 **Q.** Okay. So in your whole time, no one has ever asked for
9 those?

10 **A.** No one has asked me.

11 **Q.** When you get these forms and you go to work on them, then
12 you, as assistant director or as supervisor, could not search
13 the lines for the division chief or the chief, right?

14 **A.** That's correct.

15 **Q.** Was there an assumption made that -- because you as
16 assistant director and the supervisors were accomplishing this
17 task, was there an assumption made that these requests weren't
18 looking for conversations on a division chief's line; otherwise
19 you would have had to have Karen do all of them? Isn't that
20 right?

21 **A.** Correct.

22 **Q.** All right. You remember Mr. Walton asked you about -- it
23 was a hypothetical -- what would you do if you heard something
24 that you were concerned about that might reflect wrongdoing,
25 all right, and he asked you if you wanted to be sure, and you

1 said you would want to be sure.

2 **A.** Absolutely.

3 **Q.** To be sure, do you think it would be within your
4 responsibility and authority, in order to be sure, to listen to
5 weeks and weeks and weeks of recorded phone calls in order to
6 be sure? Do you think that's within your duties to investigate
7 like that?

8 **A.** I don't think I can answer that without being specific
9 about it. I don't know. I never had that asked of me, so I'm
10 uncertain. It would probably depend on what I heard. I
11 certainly wouldn't take lightly making an accusation of someone
12 without having facts, so --

13 **Q.** Right. And what I'm asking you is whether, as a civilian
14 employee of the police department, you would see it within your
15 job description to conduct a law enforcement investigation on
16 an officer.

17 **A.** My job description did not say that.

18 **Q.** Okay. I would like you to refer, I think, to Exhibit 1.

19 Do you have that in front of you?

20 **A.** It says 1A. Is that it?

21 **Q.** It says 1A, yes. It's under tab 1.

22 **A.** Okay.

23 **Q.** It's an Officer's Report. Do you see that?

24 **A.** Yes.

25 **Q.** And just to the right of that, it says 01/04/2012?

1 **A.** Yes.

2 **Q.** That's the date the Officer's Report was issued; isn't that
3 right?

4 **A.** I would assume so.

5 **Q.** You've seen Officer's Reports before in your --

6 **A.** Yes.

7 **Q.** Okay. This one is from Karen DePaepe, and if you look down
8 on the third line, it says, "...on February 4, 2011, I was
9 troubleshooting our Dynamic Instruments Recording System..."

10 Do you see that?

11 **A.** I do.

12 **Q.** So Exhibit 1, if you go on to read it, indicates -- and
13 this is undisputed -- that Karen DePaepe was performing the
14 troubleshooting on February 4th, 2011, when she discovered, as
15 she says, Chief Richmond's voice instead -- or Captain Young's
16 voice instead of Chief Richmond.

17 You agree that Exhibit 1 contains that recitation?

18 **A.** Yes.

19 **Q.** So it was February 4th that she would have been performing
20 the troubleshooting, right?

21 **A.** Yes, according to this report.

22 **Q.** Does that refresh your recollection at all about when she
23 told you about her discovery?

24 **A.** No.

25 **Q.** It certainly would have to have been after February 4th?

1 **A.** Absolutely.

2 **Q.** And sometime before she left on medical leave?

3 **A.** Yes.

4 **Q.** So it's kind of a wide range, but it's between February and
5 August?

6 **A.** That's correct.

7 **Q.** Okay. You were asked some questions about whether the
8 system or the recordings were ever used to trick or harass --
9 actually, I think what you were asked is whether you were aware
10 of whether the recordings were ever used to trick or harass,
11 and you said you were not aware of that.

12 **A.** That's correct.

13 **Q.** Are you aware of any conversations that took place between
14 Chief Boykins and anybody else on his command staff concerning
15 these recordings?

16 **A.** No.

17 **Q.** Not aware one way or the other?

18 **A.** No.

19 MR. SULLIVAN: Okay. Thank you.

20 I have no further questions, Your Honor.

21 THE COURT: Recross?

22 RECROSS-EXAMINATION

23 BY MR. WALTON:

24 **Q.** Looking at Exhibit 1, again, the report from Karen, she
25 indicates that, initially, when the recording system was set

1 up, Chief of Police Thomas Fautz had ordered all incoming
2 telephone lines answered by the front desk, communications,
3 chief of police lines, all division chief lines, and Internal
4 Affair lines be recorded. The reasoning behind this decision
5 was that should anyone receive telephone calls with information
6 regarding any criminal cases or allegations of misconduct by
7 officers, that we would have audio documentation of lead
8 information or allegations.

9 Do you see that?

10 **A.** I do.

11 **Q.** Was that your understanding from her when you worked with
12 her?

13 **A.** Yes.

14 **Q.** So part of recording some of the conversations would be so
15 that you could capture any of the public's complaints of
16 officer misconduct?

17 **A.** Correct.

18 **Q.** Would Internal Affairs also investigate officer misconduct?

19 **A.** Yes.

20 **Q.** Would that involve the possibility of retrieving recorded
21 conversations to examine whether or not officers had misconduct
22 or not?

23 **A.** Yes, it could.

24 **Q.** You were asked, I believe, whether or not -- I think she
25 said -- or found out that 7473 should have been recorded.

1 Did Chief Boykins ever tell you that 7473 should
2 have been recorded?

3 A. No. I had no conversation with him.

4 Q. Was it common knowledge within the department that the
5 chief determined which lines to be recorded or not?

6 A. I don't know.

7 Q. Was that your understanding, that only the chief could
8 determine --

9 A. It was my understanding, yes.

10 Q. -- that only the chief could determine which lines were
11 recorded?

12 A. Correct.

13 Q. Ultimately, his decision?

14 A. Correct.

15 Q. You said, in questions asked of you, that you said you
16 found out that Mr. Young's -- Brian Young's line had been
17 mistakenly recorded. Do you remember that?

18 A. Yes.

19 Q. Now, the change of lines from 7473 to Chief Richmond's
20 office was not a mistake, was it? He specifically asked Barb
21 Holleman to do that as chief of the Investigative Division?

22 A. Yes.

23 Q. That was done in the ordinary course of her duties?

24 A. Correct.

25 Q. And it was the ordinary practice of the officers to keep

1 their lines?

2 **A.** I don't know.

3 **Q.** Okay. So when 74 -- when 6031 was put back in his old
4 office, that was the number that she had to move back to Chief
5 Richmond's old office in order to give him his request of 7473,
6 right?

7 **A.** Correct.

8 **Q.** That wasn't a mistake; she was asked to do it?

9 **A.** Correct.

10 MR. WALTON: Thank you. That's all I have.

11 RECROSS-EXAMINATION

12 BY MR. PFEIFER:

13 **Q.** Just so we're clear, the mistake was in the recording of
14 6031, not 7473, correct?

15 **A.** Correct.

16 MR. PFEIFER: Thank you.

17 THE COURT: Anything?

18 MR. SULLIVAN: No, sir.

19 THE COURT: Are you finished with this witness,
20 Mr. Walton?

21 MR. WALTON: Yes.

22 MR. SULLIVAN: Yes, Your Honor.

23 We would like to release her from the subpoena.

24 THE COURT: Thank you very much.

25 We're going to take our abbreviated lunch break.

1 Plan to start in about a half hour.

2 MR. SULLIVAN: Very good.

3 THE COURT: We will do that. Hope we get to close
4 to a half hour.

5 (Lunch recess taken from 2:08 p.m. until 2:25 p.m.)

6 THE COURT: You can all be seated.

7 Before we start, let me tell you the schedule going
8 forward, and then I'm going to ask you a question after that.

9 We're going to go until at least 6:00 tonight.
10 Tomorrow we'll start at 9:00 and we'll do the same thing.

11 With that schedule, when do you think you will get
12 all your evidence in? We're not going to argue it at this
13 point. We're going to do a briefing schedule and so forth.

14 MR. SULLIVAN: Your Honor, if you go to at least
15 6:00 today and at least 6:00 tomorrow, then I have no doubt
16 that we will finish this tomorrow.

17 MR. PFEIFER: We've been, actually, amongst the
18 attorneys, substituting deposition excerpts instead of live
19 testimony.

20 THE COURT: Which we can read. I do that.

21 MR. PFEIFER: Or we can just present them as an
22 exhibit.

23 THE COURT: Okay. To the extent you have documents
24 you can submit and stuff like that, that will help a whole lot.

25 What I'm going to do is probably check out of the

1 hotel tomorrow morning --

2 MR. SULLIVAN: That's fine.

3 THE COURT: -- with the hope that I don't have to
4 check back in right after that.

5 MR. SULLIVAN: No, that makes sense.

6 THE COURT: Okay. Sounds good.

7 MR. SULLIVAN: Yes.

8 THE COURT: Are you ready for your witness?

9 MR. SULLIVAN: Yes, sir.

10 THE COURT: Anything we need to take up before we
11 start?

12 MR. PFEIFER: No.

13 THE COURT: Okay.

14 MR. SULLIVAN: We call Thomas Fautz.

15 (The witness was duly sworn.)

16 THE COURT: You can be seated.

17 You probably all know that I know a lot of people in
18 the courtroom that are involved in this case. Chief Fautz was
19 the chief of police when I was U.S. Attorney.

20 I don't think you're calling Dave Capp now, are you?

21 MR. SULLIVAN: No.

22 THE COURT: Obviously, I know Dave Capp and a lot of
23 other people. I know some of the officers here, too. I just
24 wanted everybody to know that. It's not going to make any
25 difference in what I do. I just wanted to let you know.

1 MR. SULLIVAN: Thank you, Your Honor.

2 THE COURT: You may proceed.

3 THOMAS FAUTZ,

4 having been duly sworn, was examined, and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SULLIVAN:

7 Q. Good afternoon, Chief. I appreciate your patience in
8 waiting.

9 Would you introduce yourself to the Court and spell
10 your name for the record?

11 A. Thomas Fautz, F, as in Frank, a-u-t-z, as in zebra.

12 Q. Thank you. Chief, you were formally the chief of police
13 for the South Bend Police Department?

14 A. Yes.

15 Q. I want to just get a little bit of your history.

16 How long were you with the South Bend Police
17 Department?

18 A. Approximately 34 and-a-half years.

19 Q. And what were the years that you were the chief?

20 A. September of 2002 until December 28th, 2007.

21 Q. What position did you hold before you were chief of police?

22 A. Investigative Division chief.

23 Q. And is that sometimes called the Detective Bureau?

24 A. Yes.

25 Q. So those two terms can be used interchangeably?

1 **A.** Yes.

2 **Q.** Okay. And before you were the division chief, what
3 position did you hold?

4 **A.** I was a captain on the police department. The assignment
5 before I was the Investigative Division chief, I was a captain
6 with -- at that time, it was called the Special Crimes Unit.
7 Now it's the County Metro Homicide Unit.

8 **Q.** And before that?

9 **A.** Before that, I was captain of the NEST Unit.

10 **Q.** Before that, if you recall?

11 **A.** I was a shift commander and a region sector commander of
12 the west sector of South Bend when we were in that program.

13 **Q.** I can't do the math in my head. Tell me the year you
14 started as a police officer.

15 **A.** 1973.

16 **Q.** Okay. You spent a lot of years as a police officer?

17 **A.** Yes.

18 **Q.** During the course of your years there, and especially
19 focusing on the time that you were the division chief and chief
20 of police, were you familiar with a phonebook that would be
21 produced that would have the numbers of police officers?

22 **A.** There was usually a sheet of paper with all of the phone
23 numbers listed with extensions.

24 **Q.** Okay. Yes. I call it a phonebook.

25 Was Barb Holleman in charge of pulling that

1 together?

2 **A.** I'm really not sure.

3 **Q.** But you know that individual police officers had -- some of
4 them had their own phones assigned to them?

5 **A.** Yes.

6 **Q.** Was there a particular function in which you would get your
7 own phone versus having the general number? How would that
8 break down?

9 **A.** It would usually be a detective in a certain segment of the
10 department, people with specialty-type jobs.

11 **Q.** What about administrative officers who would have their own
12 offices?

13 **A.** You would have to have your own office to have your
14 assigned phone number.

15 **Q.** Okay. And did officers ever have business cards with their
16 phone number on it?

17 **A.** Yes.

18 **Q.** Did you ever have that during the course of your time
19 there?

20 **A.** Yes.

21 **Q.** And what happens -- when an officer changes assignment,
22 what happens to that individually assigned line to that
23 officer?

24 **A.** It just depends on the individual. Some people like to
25 keep the same number, so they would -- their next assignment

1 they would request that that number follow them. There was no
2 really set protocol for that. It was more or less on an
3 individual's choice.

4 **Q.** Nothing in the duty manual about that?

5 **A.** Not that I know of.

6 **Q.** In your experience, in all your years there, especially as
7 chief or division chief, you never saw any written procedures
8 that told people how to do that or whether they could do that?

9 **A.** No.

10 **Q.** Okay. Now, the chief of police tends to have one number,
11 the same number, no matter who the chief is; is that your
12 experience?

13 **A.** I can't say for sure. I believe I kept the same number
14 that Chief Bennett had, who I followed.

15 **Q.** All right. What about at the division chief level; for
16 example, is there one number that is always associated with the
17 division chief of the Investigative Division or Detective
18 Bureau?

19 **A.** I really -- I really can't answer that. I can't even tell
20 you, when I took over, what that number was, but you certainly
21 would have your choice, if you wanted that number, or if you
22 had an extension before, if you wanted to keep that number, it
23 would be transferred over to your office.

24 **Q.** Okay. Chief, are you aware of whether it's common for
25 police departments to have some kind of recording system for

1 some of their telephone lines?

2 **A.** I believe it's common.

3 **Q.** Okay.

4 **A.** I don't know that every police department has it, but I
5 believe it's a common function.

6 **Q.** You're generally aware of that?

7 **A.** Yes.

8 **Q.** Would you consider yourself an expert on that in any way?

9 **A.** No.

10 **Q.** Have you ever reviewed policies from other departments?

11 **A.** I have looked at policies when we were going through CALEA
12 accreditation and we started reviewing policies from other
13 departments that met the standards.

14 **Q.** Have you ever reviewed policies for recording?

15 **A.** I don't recall seeing anything about recording.

16 **Q.** Okay. I want to focus on the time period in which you were
17 the division chief of the Investigative Division, which would
18 have been prior to '02.

19 Do I have that right?

20 **A.** Yes. I was the division chief from '97 to 2002.

21 **Q.** During that period of time, what was your knowledge about
22 the phone lines recorded at the South Bend Police Department?

23 **A.** I knew the 911 phone lines, the phones at the front desk,
24 the Detective Bureau secretary, I think there was a phone in
25 the supervisor's -- this was in the old police station before

1 remodel -- behind the front desk that the front desk phones
2 rolled over to. I think there was a line up there that was
3 taped. I think that was the majority of it. There may have
4 been one in Records, as well.

5 **Q.** Okay. Did you know about those recorded lines because you
6 had received written notice of that?

7 **A.** No. It was just kind of general knowledge.

8 **Q.** All right. Had you, in fact, ever received, as division
9 chief, any kind of written procedure which spelled out which
10 lines were recorded?

11 **A.** No.

12 **Q.** Had you received any kind of written notice of what the
13 procedure was to add or subtract a line from the system?

14 **A.** No.

15 **Q.** Did you ever issue any kind of notice, as division chief,
16 to the police officers under your command, in regard to the
17 recording of telephone lines?

18 **A.** As a division chief, no.

19 **Q.** Were you, at that time, between '97 and '02, aware of any
20 other division chiefs that may have issued some kind of notice
21 like that?

22 **A.** Not that I heard.

23 **Q.** Let me move you up now to 2002 to 2007, when you were chief
24 of police. Okay?

25 **A.** Yes.

1 Q. When you became chief, did you learn anything about the
2 recording system?

3 A. Not at first; however, I did learn that the chief's
4 secretary's line was taped.

5 Q. The chief of police?

6 A. Yes. Really, she's the secretary for the Uniform Division
7 chief, the chief and the administrative offices. But other
8 than that, no, that was pretty much my knowledge at that point.

9 Q. That's coming in '02, right?

10 A. Yes.

11 Q. So there was a remodel that you mentioned. Tell me about
12 how the remodeling of the police station occurred during your
13 period of time as the chief of police.

14 A. During my time, there was an extensive remodeling of the
15 station, expansion of the station into the courtyard, and it
16 was a difficult process to go through because the police
17 department never closes and so we had different divisions of
18 the police departments working out of different areas. I think
19 at one point the Detective Bureau was in the Street Department
20 or back in a garage area. It was difficult, but it was worth
21 the results. It came out to be a very nice station.

22 Q. Do you recall when the Detective Bureau area would have
23 been finished and you brought those officers back in? Do you
24 have a rough time frame for that, Chief?

25 A. I believe it would have been sometime in 2004. I can't

1 say, you know, halfway through the year or in the fall, but
2 that's when the station was getting completed, and we actually
3 had our dedication, I believe, in May of 2005.

4 **Q.** Okay. So '04 probably you start bringing back that
5 Investigative Division.

6 Do you recall getting a new system for recording at
7 about that time, as well?

8 **A.** I can't give you an exact timeframe. I think there was
9 some remodeling done in the radio room, as well. I really
10 can't give you a timeframe for that. It was probably in that
11 same proximity.

12 **Q.** Okay. There should be an exhibit --

13 **MR. WALTON:** Excuse me. Are you talking about in
14 the summer to the fall of 2004?

15 **THE WITNESS:** I believe so. Somewhere in there.
16 I'm not positive, though.

17 **MR. WALTON:** Thank you.

18 **BY MR. SULLIVAN:**

19 **Q.** If you look, there's a binder in front of you of exhibits,
20 and there's a tab 21.

21 **A.** (Witness complies.)

22 **Q.** Do you see that?

23 **A.** Yes.

24 **Q.** The very last page of tab 21 -- there's multiple pages
25 there. Does it look like that in your binder (indicating),

1 Chief? Are we looking at the same thing?

2 **A.** Yes.

3 **Q.** So this is a purchase order, or an invoice, I should say,
4 from Stephen Campbell & Associates billing the South Bend
5 Police Department for the installation of a DI Reliant
6 48-channel system.

7 Do you see where I've read that, sir?

8 **A.** Yes.

9 **Q.** Does this reflect your recollection about when you might
10 have received a new system?

11 **A.** I would say it would be sometime around September.

12 **Q.** Okay. That would have roughly coincided with when the
13 Detective Bureau was moving back into the remodeled police
14 station?

15 **A.** Yes.

16 **Q.** Now, in regard to this recording system, Chief, who
17 informed you about the installation, for example, of this new
18 system? Who did you rely on for that information?

19 **A.** I would rely on the Services Division chief, Chief Kilgore;
20 the radio room supervisor; the communication supervisor, Karen
21 DePaepe; and I don't know how this was paid for, but if this
22 was grant money, then I'm sure Division Chief Gary Horvath
23 would have been involved in some way.

24 **Q.** Okay. And who informed you, when you were chief, about
25 what lines were recorded at that time in the South Bend Police

1 Department when you became chief?

2 **A.** Well, nobody really told me about what lines were taped.

3 My knowledge came from Karen DePaepe at one point when I asked
4 her about adding some lines.

5 **Q.** And so Karen filled you in, at that point, about the lines?

6 **A.** Well, I mean, I don't ever recall being told what the total
7 capacity was or anything like that. I had requested some lines
8 be added and asked her if there was room for that and she told
9 me there was.

10 **Q.** Did she ever present you with any kind of list of the
11 recorded lines?

12 **A.** No.

13 **Q.** Okay.

14 **A.** Not that I can recall.

15 **Q.** Okay. During the time that you were chief -- and I'd say
16 let's focus on 2004 after, because now you've got the new
17 remodeling, you've got a new system coming in; so, if you
18 would, sir, focus on that time period.

19 Did you promulgate any written procedures or written
20 directives or memos or any kind of writing that dictated which
21 lines should be recorded?

22 **A.** Not that I can recall, no.

23 **Q.** What about the procedures that should be involved in
24 determining which lines?

25 **A.** No.

1 Q. Any writing that would have told officers to expect their
2 lines to be recorded?

3 A. No.

4 Q. Now, aside from any written communications like that, did
5 you, yourself, ever give a verbal directive -- and I'm looking
6 at you as chief of police from 2004 to 2007 -- a verbal
7 directive that only you as chief could ever determine that a
8 line should be put on the system?

9 A. No.

10 Q. Did you give any verbal direction to police officers about
11 what the standard procedure would be for recording lines?

12 A. No.

13 Q. Or verbal direction to always record a particular line?

14 A. No.

15 Q. Okay. You mentioned that you wanted to talk -- or that you
16 had discussed with Karen DePaepe some changes that you wanted
17 to make.

18 Can you tell me about that conversation and what
19 changes you wanted to make?

20 A. Again, I can't give you an exact date, or it would be in
21 that same general timeframe, either late 2004, early 2005. I
22 approached her about adding my line, the line for the
23 Investigative Division chief, and the line for the Uniform
24 Division chief, along with Internal Affairs.

25 Q. Okay. How did Ms. DePaepe respond to your request?

1 **A.** She said, "Fine," and there was room. I told her what my
2 motivation was, why I wanted those lines taped.

3 **Q.** Why did you want those lines taped?

4 **A.** I explained to her that we were being -- we were under a
5 lot of scrutiny by the community on investigations, complaints
6 that we weren't following through, that we were not dealing
7 appropriately with uses of force, those kinds of things. So in
8 that same vein, I instituted, like, an IA Pro system which
9 tracked all uses of force, all complaints against every
10 officer, every discipline. It was really pretty comprehensive.
11 It got down to sick time, injured time, all those kinds of
12 things. And, you know, we wanted a way -- it came up in a
13 discussion, and one of the division chiefs asked about having
14 his line taped, because we were under all of this scrutiny and
15 criticism, and that kind of prompted us moving forward with
16 that.

17 **Q.** Okay. The conversation where the division chief approached
18 you, did that come before or after you went to Karen and asked
19 to have these lines recorded?

20 **A.** Before.

21 **Q.** And what was the context of that discussion with that
22 division chief?

23 **A.** Well, he asked about having his line taped, and it kind of
24 sparked a conversation amongst the entire command staff about
25 whether this would be a good way to be able to document and, I

1 guess I'll use the term, "CYA." I don't know if you want that
2 spelled out. Probably not.

3 **Q.** I think I've got it, Chief.

4 **A.** Okay. And that if someone was making claims that we were
5 not following through or reacting to complaints, that we would
6 have some way to be able to document what we heard and what we
7 did. Same thing with the Internal Affairs Division. Again, we
8 were under a lot of criticism, and we tried to really address
9 any type of criticism that came up.

10 One was, for example, that people didn't want to
11 come down to the police station to file complaints, and I can
12 understand that. So we arranged with the Human Rights
13 Commission for a remote access point in Howard Park on a bus
14 line, handicap accessible, to have a place opened up there
15 where people could come.

16 So we were looking at anything we can do to become
17 more transparent; that if people had complaints, that we could
18 listen to their complaints and respond appropriately.

19 **Q.** This was the discussion at the command staff meeting you
20 were talking about?

21 **A.** Yes.

22 **Q.** Who was there?

23 **A.** I know that Chief Kyle was there, I know that Chief Hassig
24 was there, Chief Kilgore, Chief Horvath.

25 **Q.** When you say "chief," these are the division chiefs?

1 **A.** Division chiefs, yes.

2 **Q.** Does that constitute the command staff?

3 **A.** Yes. I believe that Captain Phil Trent may have been
4 there. I can't say for sure.

5 **Q.** It was a long time ago.

6 **A.** And there was more than one discussion on this.

7 **Q.** Okay.

8 **A.** And it was decided that those three lines, with the
9 knowledge and permission of the people involved -- myself,
10 Kyle, and Hassig -- that we would add those lines to the taping
11 system and that we would also add the Internal Affairs.

12 **Q.** When you say "it was decided," did you dictate to your
13 division chiefs what would be?

14 **A.** No. It was there. If they wanted it, fine. If they
15 didn't, that's fine, too. The other two division chiefs were
16 not really on the cutting edge of receiving complaints. Theirs
17 were more administrative positions, and there was -- I mean,
18 they didn't ask to have theirs taped, and there was really no
19 reason for them to even consider that, I guess.

20 **Q.** Did you offer it as a choice to the division chiefs?

21 **A.** Yes. Well, in Kyle's case, he had asked for it. He had
22 asked that it be taped. And Hassig, I can't say that Hassig
23 asked to have it done, but he was in agreement, feeling that it
24 would be a useful tool.

25 **Q.** "A useful tool." Was that your approach to it?

1 **A.** Yes.

2 **Q.** And useful for the division chiefs?

3 **A.** Yes.

4 **Q.** When you made that decision, after a series of
5 communications with your command staff in 2004, was it your
6 intent to establish a regular and ordinary procedure in the
7 South Bend Police Department that would record all division
8 chiefs?

9 **A.** No. It was a personal choice of the people in those
10 positions at that time.

11 **Q.** And what did you intend to do if they came to the
12 conclusion that they did not want that any longer?

13 **A.** Then it would be stopped.

14 **Q.** Did you talk to Karen DePaepe about that approach, your
15 approach and the purpose for recording these lines?

16 **A.** Yes. I made it clear to her of the reason why we were
17 doing this and that those people were aware their lines were
18 taped and they may even be asking her for items from that tape
19 if the need should ever arise.

20 **Q.** Okay. I want you to just briefly flip to Exhibit 49, and
21 let me know when you're there, Chief.

22 **A.** 49?

23 **Q.** Yes, sir.

24 **A.** This goes to 47.

25 **Q.** I'm sorry. 46.

1 **A.** Okay.

2 **Q.** All right. 46 is an Investigative Division set of names
3 and phone numbers.

4 And do you see, under "Administrative Staff," it
5 says "Division Chief Eugene Kyle"?

6 **A.** Yes.

7 **Q.** And that's the Gene Kyle that you just mentioned a few
8 minutes ago, isn't it?

9 **A.** Yes.

10 **Q.** So when Gene Kyle asked to have his line recorded and you
11 discussed it at a command staff meeting and then you told Karen
12 DePaepe to do it, was it your intent that line 5990 should
13 thereafter always be recorded?

14 **A.** No.

15 **Q.** You can see beneath there is Captain Richard Bishop, and
16 his number is 245-6031. Do you see that?

17 **A.** Yes.

18 **Q.** Was there any discussion at this command staff meeting
19 about recording the line of Captain Bishop?

20 **A.** Not that I can recall.

21 **Q.** What about Captain Wilson?

22 **A.** No.

23 **Q.** What about Lieutenant Hammons?

24 **A.** No.

25 **Q.** Or anybody else on that whole list? Is there anybody's

1 name -- and I would just like you to take just a couple seconds
2 and look through that. Is there anybody else that you asked
3 Karen DePaepe to put on the recording system?

4 **A.** No.

5 **Q.** Okay. Was your intent to establish any regular, repeated
6 procedure by virtue of these communications in 2004 with your
7 command staff?

8 **A.** No.

9 **Q.** Was it your intent to have a routine that all
10 administrative lines, lines to the administrative officers,
11 should potentially be subject to recording?

12 **A.** No. It was a personal choice of those officers.

13 **Q.** Okay. So you didn't establish a routine to record anybody
14 other than the people that chose to be recorded at that time?

15 **A.** Yes.

16 **Q.** Do you think that it's in the regular course of business at
17 the South Bend Police Department, or was it during your time as
18 chief, to record anybody without their knowledge?

19 **A.** It was never my policy or practice.

20 **Q.** Why would you not have done that?

21 **A.** I think they have an expectation of privacy with their own
22 assigned line.

23 **Q.** Was that what your protocol was for handling the lines when
24 you were chief?

25 **A.** Yes.

1 Q. Were you clear about that to your command staff?

2 A. I never really came out and said it that way, but I think
3 it was the understanding.

4 Q. Do you think you were clear about that with Karen DePaepe?

5 A. I told Karen DePaepe that "They are aware of it. It's with
6 their knowledge and permission," so I can't speak for Karen
7 DePaepe, how she interpreted it.

8 Q. Okay. We talked before about how some police officers
9 change assignment and take their number with them?

10 A. Yes.

11 Q. What was your intent in the protocol that you were
12 following to -- how would you handle the movement of the phone
13 line and the relationship of that line to the recording system?

14 A. I had no expertise or knowledge of how that was even done,
15 so I would -- I would certainly go through Karen DePaepe to
16 have it done.

17 Q. Okay.

18 A. Or possibly Barb Holleman. She handled some of the phone
19 stuff. I say Karen DePaepe, but that's not necessarily
20 correct. It would be one or the other.

21 Q. But those are the people that you would rely on to see that
22 your protocol was accomplished?

23 A. Yes.

24 Q. Is that fair?

25 A. Yes.

1 Q. Okay. Did you change division chiefs at some point during
2 your tenure as chief of police?

3 A. Yes. Had two retirements during my tenure. The first was
4 Chief Jim Hassig, the Uniform Division chief. He left in 2005
5 for another department in Florida, and his position was assumed
6 by Boykins.

7 Q. What was the other retirement?

8 A. The other one was when Chief Gene Kyle retired, and his
9 position was assumed by Rick Bishop.

10 Q. What was your protocol with handling new division chiefs
11 coming in and being part of your command staff? What was your
12 protocol in regard to the recording system for the new division
13 chiefs?

14 A. I don't know if you could even call it "protocol," but what
15 I did was, in the case of Chief Boykins when he assumed that
16 position, in the transition period, I explained to him the
17 lines that were taped. He was part of the command staff now.
18 I told him that my line was taped, that Chief Kyle's line was
19 taped, that Jim Hassig's line was taped, and I said Internal
20 Affairs was also taped, and I explained to him that's his
21 decision if he wants to continue with it being taped or not,
22 and that's pretty much it.

23 Q. Okay.

24 A. When Chief Kyle retired, I went through pretty much the
25 same scenario with Rick Bishop, and I asked him, "Are you going

1 to keep your same line or are you going to take Chief Kyle's
2 line?"

3 I told him, "For your information, Chief Kyle's line
4 is taped."

5 I explained that my line was taped, Internal
6 Affairs. He knew Internal Affairs because that's where he was
7 coming out of. And, you know, explained to him pretty much the
8 same thing.

9 And Rick Bishop, who had come out of Internal
10 Affairs, stated that he was still going to help with Internal
11 Affairs cases, the difficult or the important ones, and that he
12 uses his personal cell phone for personal calls and that, you
13 know -- I can't remember his exact words -- but, more or less,
14 had no problem with his line being taped.

15 **Q.** Okay. Thank you.

16 You had some familiarity with the responsibilities
17 of the director of communications when you were the division
18 chief and the chief of police, didn't you?

19 **A.** Responsibilities or interaction?

20 **Q.** Well, you generally knew what she was responsible for?

21 **A.** Yes.

22 **Q.** She answered up through the Services chief?

23 **A.** Yes.

24 **Q.** And ultimately to you?

25 **A.** Correct.

1 Q. And was the director of communications ever a sworn
2 officer?

3 A. No.

4 Q. Or a law enforcement officer at all?

5 A. No.

6 Q. Any responsibilities that relate to law enforcement?

7 A. Worked there. That was --

8 Q. Okay. If a civilian working in the communications
9 department had heard something that they believed exhibited
10 some kind of wrongdoing by an employee or an officer, what
11 would you expect that person to do?

12 A. Report it.

13 Q. And would you expect that that person would conduct their
14 own followup investigation about that wrongdoing?

15 A. That would be the role of the Internal Affairs, the chief,
16 detective, outside agency, whatever. That's who would be
17 responsible for investigations.

18 Q. You're saying not the role of civilian employees; is that
19 what you're saying?

20 A. No.

21 Q. How quickly would you expect that person to report?

22 A. I think pretty quick.

23 Q. Would you expect them to put something in writing?

24 A. At some point, yes. It depends on if they ran down there
25 just to report something to you right away, you know.

1 Q. What if they put it in writing a year later; would that
2 comport with your expectations for that person?

3 A. No.

4 Q. Now, you mentioned some of the purposes behind offering
5 this choice to the division chiefs and the command staff, and
6 part of it was really to ensure that they had backup for their
7 interactions with the public; is that fair?

8 A. Yes.

9 Q. If a line was being recorded and no one knew it, could that
10 purpose be accomplished?

11 A. Please repeat that.

12 Q. If there was a line that was being recorded by accident and
13 no one knew it was being recorded, could that action -- could
14 that recording ever help play a role in achieving the purpose
15 that you had set out for recording these lines?

16 A. Well, I think it would be improper, if not illegal, that a
17 person has to have knowledge and permission for their line --
18 one party has to give permission, and if the person didn't know
19 it, then that wouldn't be accomplished.

20 Q. Okay. And it certainly wouldn't fit with anything that you
21 were trying to get accomplished at that time?

22 A. No.

23 MR. SULLIVAN: Okay. Would you just give me a
24 minute, Your Honor?

25 THE COURT: Yes.

1 (Brief pause.)

2 MR. SULLIVAN: Thank you, Chief.

3 I pass the witness.

4 THE COURT: Cross, Mr. Walton.

5 CROSS-EXAMINATION

6 BY MR. WALTON:

7 Q. Good afternoon, Chief. Well, former chief.

8 How do you want me to address you?

9 A. "Tom" is fine.

10 Q. All right. I want to talk to you, Mr. Fautz, about your
11 practice as chief when you were recording the lines.

12 Was there any secrecy involved in your command? If
13 an officer wanted to know if his line was being recorded, could
14 he ask or she ask?

15 A. Should have that right to ask.

16 Q. And would you have told any officer if a line was being
17 recorded or not if they asked?

18 A. Yes.

19 Q. And was that common knowledge within your command staff
20 during that time, that if anybody wanted to know if their line
21 was being recorded or not, they could simply ask you, and you
22 would tell them?

23 A. I don't recall having conversations with the command staff
24 about that.

25 Q. All right. Were you ever aware of any time that Karen

1 DePaepe was ever asked if a line was being recorded where she
2 didn't advise an officer of whether it was or was not?

3 **A.** Not aware of that.

4 **Q.** Okay. Because you were talking about this open
5 transparency to the public and wanting to open up the lines of
6 communication between complaints about officers and things of
7 that nature, so you were working with your command staff in
8 order to document these types of things?

9 **A.** It was -- like I say, it was a tool for them to use to kind
10 of be able to document, if needed, the information they
11 received or accused of not following up or responding to.

12 **Q.** You were provided that invoice or shown that invoice in
13 September of 2004.

14 Are you aware of any other time after September 2004
15 when an outside vendor came in and installed the equipment to
16 record any other lines after the time that they had done that
17 work that you requested?

18 **A.** I don't know that they did the work I requested. It was
19 always my understanding that Karen just did that stuff, so I
20 didn't have a real clear understanding of how that was
21 accomplished.

22 **Q.** Okay. So you don't know, when the work was all done, if
23 anybody had ever come back in and made any other changes after
24 2004 to record other lines that you had requested be recorded?

25 **A.** I don't have -- I can't recall any, no.

1 Q. Would Karen be the person to ask?

2 A. Sure. Yes.

3 Q. All right. I wanted to talk to you again about some of the
4 reasons for these recordings.

5 When your testimony was taken by deposition, you
6 said you were not -- you didn't set up the recording system to
7 intimidate, harass, or embarrass anyone; is that right?

8 A. Yes.

9 Q. It was to gather evidence and to serve as a tool for those
10 individuals who had their lines taped to either defend
11 themselves or document what had taken place; is that a fair
12 representation of your testimony?

13 A. Yes.

14 Q. Okay. You said you considered the recordings to serve a
15 legitimate business purpose when you testified?

16 MR. SULLIVAN: This witness should have his
17 deposition if you're asking him from his deposition.

18 MR. WALTON: Well, if he disagrees, he can have it.
19 I don't think he's going to disagree.

20 MR. SULLIVAN: That's fine. He may not.

21 THE COURT: Well, he --

22 MR. SULLIVAN: He started his question off saying --

23 THE COURT: Well, he is cross-examining. He can do
24 it the way he wants to do it. If you're objecting to it, I'm
25 overruling the objection.

1 MR. SULLIVAN: Okay. Thank you.

2 MR. WALTON: All right.

3 Q. Mr. Fautz, you said you considered the recordings to serve
4 a legitimate business purpose, right?

5 A. I can't remember my exact words, to be honest.

6 Q. All right. I can get your deposition, I suppose.

7 MR. WALTON: Can I approach the witness?

8 THE COURT: Yes, you may.

9 BY MR. WALTON:

10 Q. Here's a copy of your deposition.

11 At page 20, I believe, down at the bottom, you were
12 asked: "Did you consider the recordings to serve as a
13 legitimate business purpose?"

14 And what was your answer?

15 A. Did you say page 20?

16 Q. Yes, lines 19 to 22. It's the highlighted part there.

17 A. It's page 19 on this one. 19, yes.

18 My answer was "yes."

19 Q. Okay. And you also believed that they helped the
20 department with transparency for the public, as you've
21 testified, right?

22 A. I would say the true purpose, above all else, was to be
23 able to document and stand up to the criticism and have a way
24 of proving that we responded.

25 Q. All right. Now, the recording of lines was also important

1 for the business of the police department, was it not?

2 **A.** Yes. There was a set of -- a group of lines that were
3 pretty much every day business and had been for years.

4 **Q.** All right. Would you agree with me that the recording
5 system that was being put in at that time and the decisions you
6 made for that recording system were done for legitimate
7 purposes, law enforcement purposes?

8 **A.** Yes.

9 **Q.** In fact, let's talk about what the -- just a second.

10 Let's talk, for a second, about the recording system
11 itself.

12 It was designed and, in part, would help -- for
13 example, Indiana State Police officers may want to get evidence
14 from recorded calls into the South Bend Police Department. You
15 would assist the Indiana State Police in gathering that
16 information and providing it to them?

17 **A.** Certainly.

18 **Q.** And would your people, under your direction -- and,
19 probably, ultimately, Karen DePaepe or Diana Scott -- also help
20 retrieve recorded conversations for the Indiana State Police?

21 **A.** Yes.

22 **Q.** And also would retrieve 911 calls when requested to do so
23 for investigation?

24 **A.** Yes.

25 **Q.** And also receive anonymous -- to record anonymous tips to

1 assist the department in investigations?

2 **A.** Yes.

3 **Q.** Okay. So in addition to your concern about complaints
4 about officer conduct or misconduct, the system that you had
5 installed then was being used for legitimate police business
6 purposes, in your opinion?

7 **A.** Are you talking about the 911 and all of those or are you
8 talking about those officers' phones?

9 **Q.** The entire system.

10 The entire system and the decisions that were made
11 to record with that system were all being done for legitimate
12 business purposes, for law enforcement purposes?

13 **A.** Yes.

14 **Q.** Okay. That never changed during your time you were chief
15 with the department, did it?

16 **A.** No.

17 **Q.** Okay. And, also, let's talk about what the recording
18 system was not at that time and see if you can agree with me on
19 this.

20 Is it true the system, since this time, in late
21 2004, did not record a conversation based upon its content?

22 **A.** No.

23 **Q.** Is it true that the system, at that time, did not record a
24 conversation based on the individual identity of the
25 participants in a conversation?

1 **A.** Correct.

2 **Q.** Is it also true that the system, at that time, did not
3 record a conversation based on the time of day?

4 **A.** Correct.

5 **Q.** Is it true that the system, at that time, did not record a
6 conversation to blackmail or intimidate a participant of a
7 conversation?

8 **A.** Correct.

9 **Q.** Is it also true that the system, back at that time, did not
10 record any specific kind of conversation, whether it be a
11 private conversation or a racial conversation or any other type
12 of conversation?

13 **A.** No, it didn't.

14 **Q.** Isn't it also true the system that was put in place during
15 your command did not record a conversation to spy on,
16 embarrass, or threaten any participant?

17 **A.** Correct.

18 **Q.** So when you were in there and making these decisions and
19 discussing these things with your other officers, you indicated
20 that the officers themselves could ask for a line to be
21 recorded?

22 **A.** In the case of Chief Kyle, he did, yes.

23 **Q.** Right. And Captain Bishop also asked that his line be
24 recorded, as well?

25 **A.** Well, when I explained to him that Kyle's line was, and if

1 you want your line taped, and he responded about continuing to
2 do Internal Affairs items, I assumed that's what he was getting
3 at.

4 **Q.** All right. When the system was done, there was a list
5 prepared of recorded lines.

6 Do you remember that Karen DePaepe kept a list of
7 the recorded lines?

8 **A.** I don't recall seeing that list.

9 **Q.** Okay. She may or may not have; you just don't recall?

10 **A.** Correct.

11 **Q.** You're not aware of any other time after 2004 that any
12 outside vendor came in to record another line at your direction
13 other than that fall period of 2004?

14 **A.** Not that I can recall.

15 **Q.** Okay. I'll take back your deposition, if you don't mind.

16 MR. WALTON: May I approach?

17 THE COURT: Yes, you may.

18 MR. WALTON: Thank you.

19 **Q.** Mr. Fautz, in the exhibit book in front of you, at
20 Exhibit 9, if you'll turn to that, and, actually, it's the
21 second and third pages of Exhibit 9.

22 **A.** (Witness complies.)

23 **Q.** Do you ever recall seeing that list of recorded telephone
24 lines?

25 **A.** I don't recall seeing it, but --

1 Q. Okay. In reviewing -- so you don't recall ever seeing it
2 or Karen ever giving it to you?

3 A. I don't recall ever seeing it, but we're talking a long
4 time ago.

5 Q. I understand.

6 So whatever Karen says was done with this list --
7 would you have any reason to believe that Karen DePaepe would
8 have prepared a list of recorded telephone lines and, for
9 example, added any extra lines that weren't being recorded or
10 would have deliberately left out any lines that were being
11 recorded?

12 A. I don't believe she would leave out anything. I don't know
13 what the purpose or how she prepared this --

14 Q. I understand.

15 A. -- or even -- there's no date on it, so I don't know when
16 it was prepared.

17 Q. Can I ask you, in your opinion, when Karen worked for you
18 and with you, was she honest with you, in your opinion, at all
19 times?

20 A. Yes.

21 Q. She wasn't deceptive in any way?

22 A. No.

23 Q. Did she involve herself in any police politics or anything
24 along those lines or did she avoid it, in your opinion?

25 A. Not my knowledge.

1 Q. Okay. So if Karen would have said that she prepared this
2 list, you would have no reason to believe that every line that
3 was being recorded would be -- this would be a true and
4 accurate list of the lines being recorded?

5 A. I would assume that, yes.

6 Q. Okay. No reason to doubt her, based on your experience
7 with her?

8 A. No.

9 Q. All right. On that list of lines is 245-6031. There were
10 three lines showing going into the Detective Bureau, and I can
11 help you with two of them, if you don't mind, Mr. Fautz.

12 The Detective Bureau lines 9263 and 9264 were to the
13 assistants of the chief of the Detective Bureau at the time?

14 A. Yes.

15 Q. And then 245-6031 was also going into the Detective
16 Bureau's line, at some point in time, according to this list?

17 A. Yes.

18 Q. Now, you indicated in earlier testimony -- and, again, if
19 you want to refer to your deposition, I can give it back to
20 you -- but you also had discussed earlier the idea that in
21 determining which officers would want to have their lines
22 recorded, you spoke with officers that you felt had more of a
23 contact with the public to see if they would want their lines
24 recorded so that you could help document the conversations and
25 telephone calls going in and out to the department?

1 **A.** It was a roundtable discussion where we came to that
2 agreement.

3 **Q.** Okay. Was a position of captain a position -- if a captain
4 had asked for his or her line to be recorded, and, say, the
5 captain was in the Detective Division, would you have honored
6 his request?

7 **A.** I guess it would depend on the request and what it involved
8 and I would have to hear why.

9 **Q.** Okay. Do you remember Rick Bishop being concerned about
10 getting some threatening telephone calls on his line when he
11 was a captain and he specifically requested that his line be
12 recorded?

13 **A.** I don't recall that, but I do -- I don't recall him asking
14 for his line to be recorded. I do recall we had a gentleman
15 making some threats. I don't believe Rick was assigned to the
16 Detective Bureau at the time. I think it was when he was
17 working kind of a little bit of a hybrid position of a little
18 bit of Risk Management, assisting in Internal Affairs, but I
19 don't have a direct recall on him asking that his line be
20 taped.

21 **Q.** Okay. May he have and you just don't remember?

22 **A.** It's possible.

23 **Q.** Do you remember if it could have been close in time when
24 this remodel was taking place?

25 **A.** I mean, that would have been the timeframe when Rick was

1 helping out in Internal Affairs.

2 **Q.** Okay. So Rick had indicated -- and I'm just trying to see
3 if it fits with your memory -- that he was kind of working in
4 the Detective Bureau and also working in Internal Affairs sort
5 of simultaneously?

6 **MR. SULLIVAN:** Objection. That mischaracterizes the
7 evidence. There's no testimony to that.

8 **MR. WALTON:** I'm asking if he remembers that time.
9 That's all.

10 **MR. SULLIVAN:** I object, Your Honor. He
11 mischaracterized the testimony.

12 **MR. WALTON:** I'll withdraw it and start over.

13 **Q.** Do you remember a time period when Rick Bishop was working
14 in both the Detective Bureau and in Internal Affairs?

15 **A.** Yes. When we put IA Pro into play, Rick played a lead role
16 in that, keeping the data flowing and maintaining that system.
17 He was working Internal Affairs, and I can't say for sure if he
18 was still assigned to the Detective Bureau but the majority of
19 his work, I believe, was in the other area.

20 **Q.** Okay.

21 **A.** That's to the best of my recollection, like I say.

22 **Q.** That's fine.

23 I want you to turn to Exhibit 43, if you would.

24 **A.** (Witness complies.)

25 **Q.** Do you have it there, Mr. Fautz?

1 **A.** Yes.

2 **Q.** Okay. This is the resumé of Rick Bishop that he put
3 together. He indicates that he was in the Detective Bureau as
4 a captain from October 3, 2002, to January 1, 2005.

5 Does that sound about right to you from your memory?

6 **A.** I would assume it was in that range, yes.

7 **Q.** And then he was captain of Risk Management in Internal
8 Affairs from January 1, '05, to January 10, 2007?

9 **A.** Yes.

10 **Q.** Now, if you will turn to -- well, let's just go through the
11 rest of it.

12 Then he indicates he was division chief of the
13 Investigative Division from January 5, 2007, to February 28,
14 2010?

15 **A.** Yes.

16 **Q.** When did you leave as captain -- I mean, as chief of the
17 police; do you recall?

18 **A.** December 28th, 2007.

19 **Q.** 2007.

20 So Rick, just like you indicated, would have been
21 division chief under your command at some point?

22 **A.** Yes.

23 **Q.** Okay. Then look at Exhibit 44, please.

24 **A.** (Witness complies.)

25 **Q.** That's the card of Captain Rick Bishop when he was in

1 Professional Standards with the number 6031. Do you see that?

2 **A.** Yes.

3 **Q.** Then Exhibit 45, the identification card of Rick Bishop
4 with number 6031 when he was division chief of the
5 Investigative Division?

6 **A.** Yes.

7 **Q.** And then, if you turn to Exhibit 46, you were asked to look
8 at that before, the Investigative Division.

9 **A.** (Witness complies.)

10 **Q.** At that time, Captain Richard Bishop had 6031 as a captain
11 in the Investigative Division at some point when Chief Kyle was
12 the division chief?

13 **A.** Yes.

14 **Q.** Now, you indicated, when Rick Bishop took over of Gene
15 Kyle's position, that you had informed him that Chief Kyle's
16 line had been recorded at that time?

17 **A.** Yes.

18 **Q.** Okay. And then you also testified -- and I'm just asking
19 you if this is right -- when you talked to Rick Bishop, you
20 said: "Now, I understood from your previous testimony that you
21 were the one that actually sat Bishop down and explained to him
22 that the line was recorded?"

23 And you indicated, "Yes," you had?

24 **A.** Yes.

25 **Q.** And you were asked, "Did you ever communicate to Karen that

1 you were having these specific conversations with the officers
2 to advise them?"

3 You said, "No."

4 **A.** No, I didn't.

5 **Q.** Okay. And then you said, "No, I never told her about
6 Bishop. I told her, when we originally set those up with those
7 officers, you know, it was with their permission and
8 knowledge."

9 And you said you never told her about Bishop?

10 **A.** No.

11 **Q.** Okay. Was there a reason for that or just your memory is
12 that you never told her that conversation?

13 **A.** I don't know what was in my mind then, but I didn't tell
14 her.

15 **Q.** Okay. Then you were asked, "At the time of the transition
16 from one individual to the next, did you sit Karen down and say
17 you were doing this with Bishop?"

18 And you said, "No. No, I didn't."

19 Is that right?

20 **A.** Yes.

21 **Q.** Your memory is, clearly, then, that Rick Bishop knew his
22 line was being recorded, and you asked Rick Bishop if he wanted
23 his line to continue being recorded; is that right?

24 **A.** Not continue. I mentioned that Chief Kyle's line was
25 taped. I didn't know if he was going to keep this number

1 that's assigned to him or if he was going to take Kyle's
2 number. And if he took Kyle's number, I wanted him to know
3 that that line was being taped.

4 **Q.** All right. As far as you are aware, after you had these
5 conversations with your entire command staff, and they
6 installed the changes in this system with the remodel, had your
7 purpose for recording the system ever changed from the time you
8 left as chief?

9 I think I maybe asked you that.

10 **A.** No.

11 **Q.** And were you around when Chief Fautz -- sorry -- Chief
12 Boykins came in as chief?

13 **A.** I was there up till my last day during the transition
14 period, but his first day as chief was the day I left.

15 **Q.** Did you ever have an opportunity to explain to him anything
16 about the recording system, or did you assume that Karen would
17 pick that up and talk to him about it?

18 **A.** When he -- no, not when he was assuming my position. When
19 he took the Uniform Division chief's job, yes, I said something
20 to him then.

21 **Q.** Right. That his line was being recorded?

22 **A.** Yes.

23 **Q.** Did he indicate to you that he did not want his line
24 recorded?

25 **A.** No.

1 Q. In fact, did any of these officers in your command ever
2 indicate to you that they didn't want their line recorded?

3 A. No. I mean, they felt it was a good idea.

4 Q. And so did you?

5 A. Yes.

6 Q. The testimony has been, in this case, that the final
7 decision as to what lines are or are not recorded are up to you
8 as chief.

9 Was that your understanding while you were there at
10 the department?

11 A. I think the chief had the final say, yes.

12 Q. Okay. So even if somebody didn't want their line recorded,
13 you actually could have ordered it recorded if you felt it was
14 for legitimate business purposes?

15 A. If they gave me their permission.

16 Q. I understand.

17 You would have told them at the time that it was
18 going to be recorded, but you could have said, "Whether you
19 want to or not, I'm going to record it," but that didn't
20 happen, right?

21 A. That didn't, and I couldn't see me doing that.

22 Q. Okay. Now, in 2004, when this recording system, again, was
23 set up, and you went through your department to try to
24 determine what would be the best way in which to handle the
25 recording system, there were also civilians or people that

1 worked at the department whose lines were also being recorded;
2 is that right?

3 **A.** Their own personal lines?

4 **Q.** The lines where civilians worked who actually handled the
5 calls, like, at 911 and dispatch and those areas.

6 **A.** Oh, yes, 911, radio room, those lines, yes.

7 **Q.** And there were civilians there whose lines were being
8 recorded.

9 And so did any of those people ever complain about
10 whether or not their line should or should not be recorded
11 while you were captain? I mean while you were chief. I'm
12 sorry.

13 **A.** No.

14 **Q.** Was it common knowledge, during the time while you were
15 chief, that the officers there, in your opinion -- all the
16 officers knew that lines were being recorded into the
17 South Bend Police Department?

18 **A.** I can't speak for everyone, but I assumed they knew that
19 911 and the front desk lines were being taped. Other than
20 that, I don't know what their knowledge would be.

21 **Q.** All right.

22 **A.** I can speak as an officer on the street when I was there.
23 I didn't know.

24 **Q.** You didn't know any lines were being recorded?

25 **A.** Oh, you knew 911 was, you knew the front desk was, but

1 other than that, I mean, that's pretty much where your
2 knowledge would end.

3 **Q.** You would also know that the chief could make a decision on
4 what lines could be recorded, as well, right?

5 **A.** I'm sure, yes.

6 **Q.** Okay. Did you ever instruct any of your chain of command
7 to not tell any of the other officers in the department that
8 their lines were now being recorded?

9 **A.** When I talked with Karen, I asked her to keep it discreet
10 that my line, Kyle's line, and Hassig's line were being taped,
11 and I included Internal Affairs, that I wanted that kept
12 discreet, that it was a personal tool for them.

13 **Q.** But did you ever instruct any of those officers not to let
14 other officers know their lines were being recorded?

15 **A.** No. I mean, that would be up to them, but, no, I didn't
16 instruct them.

17 **Q.** In fact, for transparency, wouldn't you think that the
18 other officers that were there, if their lines were being
19 recorded, they would let other officers know that, "Hey, if you
20 call me, you know, my line is being recorded"?

21 You wanted not just your command staff to know, but
22 you weren't trying to hide it from other officers in the
23 department, were you?

24 **A.** Well, I wouldn't ever want to inhibit anybody from talking
25 to those people. If they wanted people to know, I guess it

1 would be up to them to tell them. I wasn't going to announce
2 to the entire department or the community in that respect.

3 **Q.** I understand.

4 But you would expect that the other officers in your
5 command would let other officers know, "Hey, if you call me on
6 this line, I'm being recorded"?

7 **A.** I can't speak for them, what they did or what they didn't
8 do.

9 **Q.** You didn't prohibit that, though?

10 **A.** No.

11 **Q.** So if an officer moved into a new office during the time
12 you were captain and got a new number, could that officer come
13 to you or Karen, based on your experience, and say, "Hey, are
14 any of my lines being recorded?"

15 **A.** Certainly they could come, and we would tell them.

16 **Q.** You wouldn't hide it from anybody?

17 **A.** No.

18 **Q.** All they would have to do is ask?

19 **A.** Correct.

20 MR. WALTON: Just a second, Your Honor.

21 (Brief pause.)

22 BY MR. WALTON:

23 **Q.** From looking at the exhibits that we looked at regarding
24 6031, would you agree with me that that line was Rick Bishop's
25 line?

1 **A.** On this document, yes, it was. On his business card, it
2 was.

3 **Q.** And on the list, when he was in the Detective Bureau, 6031
4 was his line, as well?

5 **A.** Well, that's the way it appears on this line.

6 MR. WALTON: Okay. Thank you. That's all the
7 questions I have.

8 THE COURT: Mr. Pfeifer.

9 CROSS-EXAMINATION

10 BY MR. PFEIFER:

11 **Q.** By "this list" that you've just been referring to, what
12 exhibit number is that?

13 **A.** 46.

14 **Q.** And those are the business cards for Rick Bishop, correct?

15 **A.** Yes.

16 **Q.** Taking a look back at Exhibit 9, if you would, please, the
17 third page; do you see that? It starts out "Administrative
18 Phones" and then there's -- two, four, six -- "Front Desks" and
19 then "Internal Affairs," "Chief's Office."

20 Do you see that?

21 **A.** Yes.

22 MR. PFEIFER: Does the Court have a copy of that or
23 do you need it on ELMO, Your Honor?

24 THE COURT: It would be easier, if you want, to put
25 it up on ELMO, or not.

1 MR. PFEIFER: I didn't know if you had a copy up
2 there or not.

3 THE COURT: At the end of the day, I'll trust I'll
4 have copies of everything.

5 MR. PFEIFER: Okay.

6 Q. Now, with respect to that third page of Exhibit 9 -- and I
7 will put it up on ELMO -- we know that Gene Kyle's phone number
8 was 9550 (sic), correct?

9 A. I'm going to have to look at this other sheet then.

10 Q. I think it's Exhibit 46.

11 5990. Excuse me.

12 A. Yes.

13 Q. Okay. And Gene Kyle was the division chief in the
14 Investigative Division, and Rick Bishop took his place,
15 correct?

16 A. Yes.

17 Q. So going back to Exhibit 9, which is a list of lines that
18 were recorded, the number 5990, Gene Kyle's number, is not on
19 that list, correct?

20 A. Yes.

21 Q. So we know that, when this list was generated, either Gene
22 Kyle's number was not put on the list, if it was being
23 recorded, or it was a list that was generated after Gene Kyle
24 was no longer the division chief; would you agree with that?

25 A. I would agree with it.

1 Q. Okay. So the 6031 number, that was a number that Rick
2 Bishop had when he was a captain in the Investigative Division,
3 the Detective Bureau, correct?

4 A. Yes.

5 Q. Then his office physically relocated from the Detective
6 Bureau over to the other side of the building, and that was the
7 Internal Affairs section?

8 A. I can't be sure where his office ended up, but he
9 progressed to the Internal Affairs Division.

10 Q. And the Internal Affairs Division was in a completely
11 different end of the police station, even after it was
12 remodeled, correct?

13 A. Yes.

14 Q. And then after being in the Internal Affairs section, when
15 Rick Bishop became the division chief, he went back to the
16 Detective Bureau, correct?

17 A. Yes.

18 Q. And 6031 seems to be a number that's following Rick Bishop
19 when he is in the Detective Bureau as a captain, when he goes
20 over to the Internal Affairs section, and then when he comes
21 back to the Detective Bureau; is that correct?

22 A. Yes.

23 Q. So when the decision was made, at Gene Kyle's request, to
24 have his phone line recorded, he was the division chief, and he
25 had the number 5990, correct?

1 **A.** According to this sheet, yes.

2 **Q.** When Rick Bishop took over as the division chief of the
3 Detective Bureau, his number was 6031; would you agree with
4 that?

5 **A.** Yes.

6 **Q.** So when the decision was made to record individual
7 officer's lines with their permission, you were not recording
8 necessarily a specific line, 5990, that would always be the
9 division chief's line of the Detective Bureau; is that correct?

10 **A.** That's correct.

11 **Q.** Because individual officers took their lines from location
12 to location within the building, if that was possible, with
13 this system?

14 **A.** Yes.

15 **Q.** You were asked questions by Mr. Walton about the law
16 enforcement purposes of recording phone lines.

17 Do you recall him asking you that question?

18 **A.** Yes.

19 **Q.** In terms of recording the front desk, was the front desk --
20 or were the front desk phone lines always recorded, as long as
21 you knew it, when you were the chief?

22 **A.** Yes.

23 **Q.** Did all the other officers know that, to your knowledge?

24 **A.** Yes.

25 **Q.** That's the common knowledge that you're talking about?

1 **A.** Yes.

2 **Q.** The 911, the communications section of the police
3 department, those lines were recorded, correct?

4 **A.** Yes.

5 **Q.** Those functions, the communications function and the 911
6 function, is that the recording of the phone lines, those
7 functions, that you're talking about when you talk about "law
8 enforcement purposes"?

9 **A.** Yes.

10 **Q.** With respect to individual lines, when you had the series
11 of meetings with your command staff, and you were making
12 decisions ultimately to make available to your division chiefs
13 the recording of their lines, was that decision that was made
14 by you and your command staff a decision that was made for the
15 benefit individually of the officer?

16 **A.** Yes.

17 **Q.** It wasn't a law enforcement purpose for the division chief
18 of the Investigative Bureau to have his personal line recorded;
19 it was more of an individual benefit for that officer; would
20 you agree with that?

21 **A.** Yes.

22 **Q.** In your experience as the chief of police, is there any law
23 enforcement purpose for the recording of a police officer's
24 phone line without his or her knowledge that the phone line is
25 being recorded?

1 **A.** The only circumstance I could think of is if there was a
2 warrant to do something like that, but not -- not without his
3 permission or knowledge.

4 **Q.** Absent a warrant or absent an investigation that was being
5 conducted, would there be any legitimate law enforcement
6 purpose to record an individual phone line without that
7 individual's knowledge or permission?

8 **A.** No.

9 **Q.** In fact, the duty manual -- take a look, if you would, at
10 Exhibit 12.

11 **A.** (Witness complies.)

12 **Q.** The duty manual talks about, in the "Employee Rights,"
13 paragraph A, that if an individual officer is being
14 investigated by Internal Affairs, the individual officer has
15 the right to know that the investigation is taking place; is
16 that correct?

17 **A.** Yes.

18 **Q.** Would Karen DePaepe, as director of the communication
19 department or division or section of the South Bend Police
20 Department, ever have any right or authority to conduct any
21 type of investigation?

22 **A.** No.

23 **Q.** As the chief of police, if a phone line was mistakenly
24 recorded, as in the case with Brian Young, once it is learned
25 that that line was mistakenly recorded, and Brian Young did not

1 know that the line was being recorded, what would you expect
2 the person who made that discovery to do?

3 **A.** Notify the chief so that we could terminate it immediately.

4 **Q.** Would you expect that person, whoever that person might be,
5 to continue to listen to phone conversations of, in this
6 illustration that I'm giving to you, Brian Young, for almost a
7 year without letting you, as the chief of police, know that
8 fact?

9 MR. WALTON: Objection, Your Honor. It assumes a
10 fact not in evidence. He was no longer chief when this took
11 place.

12 MR. PFEIFER: I said if he had been the chief of
13 police. That's the way the question was phrased.

14 MR. WALTON: Well, he's not entitled to hypothesize
15 what he would have done in 2010 or 2011.

16 THE COURT: I'm going to overrule the objection;
17 however, I'm not sure how much relevancy it has because he
18 wasn't the chief at that time, but I'll overrule the objection.

19 MR. PFEIFER: That's fine.

20 **A.** Can you repeat that?

21 **Q.** Yes, I will repeat it myself, for the benefit of the court
22 reporter.

23 Let me rephrase it this way: When you were the
24 chief of police, if it was discovered by somebody in the
25 communications section that a phone line had been mistakenly

1 recorded without the knowledge of the person that that line was
2 assigned to, and the person in communications listened to those
3 phone recordings for up to a year, would that, as the chief of
4 police, when you were the chief, have been acceptable to you?

5 **A.** No.

6 **Q.** Why not?

7 **A.** It should have been reported immediately, notify the
8 officer of what happened, and then talk with the City attorney
9 about what we do with that information and that tape.

10 MR. PFEIFER: If I could have a second, Your Honor?

11 (Brief pause.)

12 BY MR. PFEIFER:

13 **Q.** From your perspective, as the chief of police, does it
14 serve any law enforcement purpose for a phone line to be
15 inadvertently recorded and the recording of that phone line to
16 be listened to?

17 **A.** No.

18 MR. PFEIFER: Thank you.

19 THE COURT: Redirect?

20 MR. SULLIVAN: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. SULLIVAN:

23 **Q.** Chief, just a few follow-up.

24 Chief Fautz, I'm going to read what is a stipulated
25 fact in this case, Stipulation Number 15.

1 "Former Chief Boykins made no changes to any of the
2 lines that were recorded and specifically adopted the approach
3 of Chief Fautz and issued no written or oral directive to
4 create a policy, procedure, practice, or routine, and none was
5 implemented during his tenure."

6 That's a stipulated fact in this case.

7 So based upon that and the fact that former Chief
8 Boykins wanted to specifically adopt your approach, would you
9 say it fits your approach to have the telephone line 6031
10 recorded, no matter who it was directed to, even without their
11 knowledge? Would that fit your approach?

12 **A.** No.

13 **Q.** Okay. And just to be clear, would there be any recording
14 of a phone line without permission or knowledge -- a privately
15 assigned phone line -- without permission or knowledge that
16 would fit your approach?

17 **A.** No.

18 **Q.** You recall there were some questions about the entire
19 system, This recording system was not for the purpose of
20 intimidating, et cetera. Do you remember that line of
21 questioning by Attorney Walton?

22 **A.** Yes.

23 **Q.** Okay. How much do you know about the system?

24 **A.** Not much.

25 **Q.** Okay. You know it records lines?

1 **A.** Yes.

2 **Q.** You know it records the lines that are wired into it?

3 **A.** Yes.

4 **Q.** But we also now know that an officer took over a line
5 without knowledge or permission, as has been stipulated in this
6 case.

7 So if that happens, is it possible that the system
8 then could be used for improper purposes?

9 **A.** I guess it's possible. I would hope it wouldn't.

10 **Q.** I understand. I'm just trying to be sure we round out the
11 testimony about what's possible with the system.

12 **A.** Okay.

13 **Q.** In the case of a telephone line that is placed in an
14 office, and that officer doesn't know it's there, doesn't know
15 it's recording, but other people do know that and don't tell
16 that officer, can the system then potentially be used for
17 improper purposes?

18 **A.** Potentially.

19 MR. SULLIVAN: Okay. Thank you, Chief.

20 No further questions.

21 THE COURT: Recross?

22 MR. WALTON: Yes.

23 RECROSS-EXAMINATION

24 BY MR. WALTON:

25 **Q.** Mr. Fautz, when I asked you earlier about and showed you

1 the lines going into the Detective Bureau that were on that
2 list, there were three of them.

3 Do you remember that?

4 **A.** Yes.

5 **Q.** One of them was 6031 that we now know is Rick Bishop?

6 **A.** Yes.

7 **Q.** The other two, 9263 and 9264, were the secretaries of, at
8 the time, Gene Kyle; is that right?

9 **A.** Yes.

10 **Q.** Because, actually, they're also noted on that exhibit, that
11 one of them is the secretary of Gene Kyle being recorded?

12 **A.** I think the other one is, like, the rollover line that it
13 goes to.

14 **Q.** Right. So, in fact, 9263 and 9264 were recording lines
15 coming into Gene Kyle's secretary after this meeting that you
16 had?

17 **A.** That was before the meeting.

18 **Q.** Oh, okay. They were always being recorded?

19 **A.** Yes. I can't say "always," but they had been recorded for
20 a number of years, I'm sure.

21 **Q.** Now I want to talk to you about some of your other
22 testimony about these individual lines.

23 You're not really telling everybody that there's no
24 circumstances under which recorded lines into any one of your
25 chief of a division's office couldn't be used for law

1 enforcement purposes, are you?

2 I mean, can't you see somebody calling into the
3 chief of the Detective Bureau and giving them anonymous tips,
4 giving them information that might assist them in their case?

5 MR. PFEIFER: I object. I realize it's a bench
6 trial, but I'm going to object to the form of the question.

7 First of all, it's compound. There was a statement
8 made at the very beginning of the question, and I don't know
9 which question he's really --

10 MR. WALTON: I will rephrase it.

11 MR. PFEIFER: Thank you.

12 BY MR. WALTON:

13 Q. When you're recording the chiefs' lines of all your
14 divisions, at least three of your divisions, if somebody called
15 in and gave an anonymous tip to Chief Boykins when he was there
16 or Chief Kyle when he was there, that could be used for law
17 enforcement purposes, could it not?

18 A. Yes.

19 Q. You would have used that information to further the
20 business of the department?

21 A. Yes. If they brought it forward, yes.

22 Q. Likewise, if there was a complaint about Chief Boykins when
23 were you there or Chief Kyle when you were there or someone in
24 Internal Affairs whose line you knew was being recorded, that
25 would be used to investigate whether or not that chief had

1 misconduct or whether or not there may have even been -- well,
2 let me just leave it with that.

3 Isn't it possible that that would be for law
4 enforcement purposes to determine whether or not that
5 particular person, whose line had been recorded, was acting
6 appropriately?

7 **A.** First, I would have to know about it, and having never
8 listened to any of those lines or asked to have them listened
9 to, it would be up to them to bring that forward.

10 **Q.** All right. Well, you indicated, though, when the
11 individual came in and asked for it, you thought it was
12 important that these particular individuals have transparency
13 with the public because you're having a lot of misconduct or
14 things being reported in the community, so you wanted to have
15 transparency.

16 That's one of the reasons why you asked for these
17 individual lines to be recorded; is that right?

18 **A.** I asked Karen; however, the first one, Chief Kyle's, he
19 requested. The second one, in open discussion, we decided to
20 add my line and Chief Hassig's line.

21 **Q.** Again, to respond to possible complaints from the public
22 about misconduct, things of that nature?

23 **A.** In a way, yes. Like I said, it was like an insurance
24 policy or a CYA for that person, that we did what we were told
25 and how we reacted to it.

1 Q. I understand. But there could be circumstances where that
2 same recorded conversation could be used against that officer,
3 of a complaint of that officer, correct?

4 A. Potentially, yes.

5 Q. You don't know what's going to come into that line when
6 you're the chief of a division, do you?

7 A. No.

8 Q. It could be anything?

9 A. Yes.

10 Q. It could be about a murder?

11 A. It could be.

12 Q. Okay. Then with regard to some questions you were asked
13 about Karen and her authority, it was within Karen's authority
14 to respond to requests from outside agencies to get information
15 and to look for conversations in response to that request; is
16 that right?

17 A. I think you would have to be a little bit more specific on
18 conversations.

19 Q. All right. I'll give you some examples.

20 A. Case related?

21 Q. Case related.

22 A. Okay, yes.

23 Q. Indiana State Police comes in and say they want her to
24 check some lines for some information.

25 Yes?

1 **A.** Yes, 911, those types.

2 **Q.** And if she came upon a conversation, I think you indicated,
3 even in your deposition, she would have to listen to that
4 conversation long enough to realize if that was responsive to
5 that request?

6 **A.** Yes.

7 **Q.** So she did have authority to listen to conversations for a
8 specific length of time in order to determine whether or not
9 the information she was gathering for others was going to be
10 relevant or material to the investigation?

11 **A.** I don't know that her decision was what was relevant or
12 material. I know that when I worked in investigation, if I had
13 requested some information from a call-in into the department,
14 I would sit there with her and listen to it and tell her what
15 parts I needed.

16 **Q.** But there were times that didn't happen, right, where she
17 was just asked -- for example, a FOIA request, if she was asked
18 for freedom of information from the press. Somebody from the
19 press didn't sit with her and go through the lines?

20 **A.** No.

21 **Q.** So there were times where she had to use her discretion of
22 what was in the context of what was being sought; fair enough?

23 **A.** I would assume so, yes.

24 **Q.** And if she came upon a conversation -- well, let me ask you
25 this: She was also responsible for maintaining that system to

1 make sure it was operating appropriately, correct?

2 **A.** Yes.

3 **Q.** So she would have authority to go into the system to
4 determine if the lines were still being appropriately recorded
5 had there been a problem with the system or a shutdown?

6 **A.** Yes.

7 **Q.** And in going through that process, if she came upon a
8 conversation that she felt was conduct that may be unbecoming
9 of an officer, would she have to use her judgment about how
10 much of that conversation to listen to before she decided to
11 make that kind of allegation up the chain of command against an
12 officer in the department?

13 **A.** I'm sure it would take a lot of consideration on her part
14 to step forward and do that, yes.

15 **Q.** Okay. You wouldn't expect her to ignore it or only listen
16 to five seconds of it before she reported an officer for
17 misconduct; fair enough?

18 **A.** I would feel more comfortable if she notified me right away
19 and we would have determined together what was appropriate.

20 **Q.** I understand. But you would have expected her to do her
21 due diligence?

22 **A.** On checking the lines to make sure they're working, yes.

23 **Q.** And before making an allegation against an officer to you,
24 you would also expect her to use her good judgment?

25 **A.** To a certain extent, yes.

1 Q. Did you ever have experience with her at any time you
2 worked with her where, in your opinion, she didn't exercise
3 appropriate judgment about such matters?

4 A. No.

5 MR. WALTON: Thank you.

6 THE COURT: Recross?

7 MR. PFEIFER: No, Your Honor.

8 MR. SULLIVAN: Very briefly.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. SULLIVAN:

11 Q. Let's just pick up on this last point Attorney Walton
12 asked.

13 The question had to do with how much review somebody
14 in the position of Karen DePaepe should do if she's aware of
15 some allegation.

16 Do you recall that?

17 A. Yes.

18 Q. There's another stipulation in this case, and it's a
19 stipulation that the telephone conversations captured by the
20 Police Department's DIR recording system and then subsequently
21 reduced to five audio cassette tapes by Karen DePaepe occurred
22 on the following dates: February 4th, 2011, April 5th, 2011,
23 June 3rd, 2011, June 6th, 2011, June 16th, 2011, June 27th,
24 2011, July 14th, 2011, July 15th, 2011.

25 Now, do you think -- one, two, three, four, five,

1 six, seven, eight different days, covering a span of February
2 through July. Would you expect your communications director to
3 conduct an investigation in which, from February through July,
4 conversations had to be reviewed and determined which ones to
5 put on a cassette tape so that they could be placed with an
6 Officer's Report a year after discovering the line was taped?

7 MR. WALTON: Your Honor, I object. He has no
8 personal knowledge of the circumstances that occurred at the
9 time. He wasn't there. He wasn't chief. Chief Boykins was
10 there at the time. He has no basis to answer that question.

11 MR. SULLIVAN: Your Honor, I'm responding directly
12 to the examination that Mr. Walton made about what was proper.

13 THE COURT: He can say what's proper on what he
14 would do.

15 MR. SULLIVAN: My question, Your Honor -- and I
16 didn't quite get it out -- was going to be: As chief, would he
17 consider those actions to be within the proper scope of duty of
18 the director of communications? That was my question.

19 THE COURT: His answer can't bind former Chief
20 Boykins, though.

21 MR. SULLIVAN: I'm sorry, sir?

22 THE COURT: His answer can't bind former Chief
23 Boykins.

24 MR. SULLIVAN: No, sir.

25 THE COURT: Okay. You're just asking what would be

1 his opinion as to what would be appropriate conduct?

2 MR. SULLIVAN: That's correct.

3 THE COURT: With that caveat, I'm going to overrule.

4 MR. WALTON: Again, Judge, just to make my record,
5 he wasn't there. He doesn't know what Karen was telling the
6 chief. He has no basis to answer this question. He doesn't
7 know the facts under which these were recorded. He doesn't
8 know the circumstances, whether they were a FOIA request or
9 under what circumstance. He wasn't even there, so how can he
10 answer that question?

11 THE COURT: He can answer it based on what was said
12 in the question. He can't go beyond the question.

13 MR. WALTON: I understand, Your Honor. He has no
14 idea what was being recorded or why.

15 THE COURT: And it's limited to what he would have
16 done based on the facts set forth in that question. It's got,
17 probably, a limited relevancy. I agree with you.

18 MR. WALTON: Fair enough.

19 BY MR. SULLIVAN:

20 **Q.** Can you answer my question, Chief?

21 **A.** Unless she was directed to do that by me, no. That should
22 have been reported at the first instance.

23 MR. SULLIVAN: Thank you. No further questions,
24 Your Honor.

25 THE COURT: Mr. Walton.

FURTHER RECROSS-EXAMINATION

BY MR. WALTON:

Q. Are you aware that she did report it --

A. No.

Q. -- to Chief Boykins? You don't know whether she did or not?

A. No, I don't.

MR. WALTON: Thank you.

THE COURT: Mr. Pfeifer?

MR. PFEIFER: Still no.

THE COURT: Any further questions for former Chief Fautz?

MR. SULLIVAN: No.

THE COURT: Thank you very much.

We're going to take our afternoon break, about a 15-minute break, and we'll get back.

How long do you think the next witness will take?

MR. SULLIVAN: I was going to discuss that with counsel, Your Honor, to try and determine who we should call next and how much time is left.

THE COURT: I would like to get as far as I can get this evening without beating the court reporter up too badly.

MR. SULLIVAN: Yes, sir. We will do our best.

THE COURT: Okay. We'll take about a 15-minute break.

1 MR. SULLIVAN: Thank you.

2 (Brief recess was taken.)

3 THE COURT: You can all be seated.

4 One of the things I do, one of my habits, when I
5 adjourn, you can go ahead and do whatever you want to do, at
6 that point, because sometimes it takes me time to get my stuff
7 gathered up or I'll forget things and everything else and I'll
8 have to come back in three or four times to pick it up. So
9 once I say it's adjourned, it's a free fire zone. You can do
10 whatever you want to at that point.

11 MR. SULLIVAN: Thank you, Your Honor.

12 THE COURT: Your next witness is?

13 MR. SULLIVAN: Yes, sir. It's Captain Darryl
14 Boykins.

15 THE COURT: Would you please stand, raise your right
16 hand, and face the courtroom deputy.

17 (The witness was duly sworn.)

18 THE COURT: You can be seated.

19 DARRYL BOYKINS,
20 having been duly sworn, was examined, and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SULLIVAN:

23 Q. Good afternoon, Captain Boykins. Thank you for your
24 patience today.

25 Would you state your full name and spell it for the

1 record.

2 **A.** Darryl Boykins, B-o-y-k-i-n-s.

3 **Q.** What's your current position with the South Bend Police
4 Department?

5 **A.** Captain.

6 **Q.** How long have you been a captain?

7 **A.** For about two years.

8 **Q.** Prior to that, you were the chief of police of the
9 South Bend Police Department?

10 **A.** Yes.

11 **Q.** What year did you become chief?

12 **A.** Let me go back. That was about 2000 -- six years ago, so I
13 would say 2007.

14 **Q.** Did you follow Chief Fautz?

15 **A.** Yes, I did.

16 **Q.** You immediately succeeded Chief Fautz?

17 **A.** Yes, I did.

18 **Q.** Before you became chief -- well, all told, Captain, how
19 long have you been a police officer?

20 **A.** Right now, 30 years.

21 **Q.** Now, when you succeeded Chief Fautz, you didn't have a full
22 understanding about the capabilities of the voice recording
23 system at the police department at that time; isn't that
24 correct?

25 **A.** No, I did not.

1 Q. You were never presented with a list of recorded lines;
2 rather, you had some discussion with Karen DePaepe and Barb
3 Holleman and you learned what was recorded?

4 A. Yes.

5 Q. There was nothing written in regard to procedures for
6 recording lines in the police department; isn't that correct?

7 A. Yes. There was nothing to go by.

8 Q. Captain Boykins, there's a stipulation in this case, which
9 means that all parties agree to certain facts, and I'd like to
10 read that to you.

11 "Darryl Boykins made no changes to any of the lines
12 that were recorded. He specifically adopted the approach of
13 Chief Fautz and issued no written or oral directive to create a
14 policy, procedure, practice, or routine, and none was
15 implemented during his tenure."

16 Did you understand what I just read?

17 A. Yes, I do.

18 Q. So you knew that Chief Fautz had, we'll call it, a certain
19 approach to things, right?

20 A. Yes.

21 Q. And you didn't know everything about it, but you knew he
22 had a certain approach?

23 A. I didn't know why he did it. I know he had the lines and
24 he taped for whatever -- I think official police policy or I
25 mean -- not conduct, but what his plans were to use them for,

1 but he didn't tell me.

2 Q. Well, you wanted to follow whatever he did; isn't that
3 right?

4 A. I kept it the same. Whatever he had, I kept it the same.
5 I didn't change it.

6 Q. You wanted to follow his protocols?

7 A. Yes.

8 Q. One aspect of that was that you believed that the division
9 chief of the Detective Bureau could have his line recorded on
10 demand, meaning when he wanted it?

11 A. I really, on that part of it, I knew, under the new policy
12 on the new phones we got from VoIP, we could actually have the
13 phone taped or whatever, and the detective or captain or chief
14 who may have that on their line could be able to record their
15 own phone lines knowing their line was recorded.

16 Q. In front of you, there's an exhibit binder, and right next
17 to that, there is a copy of your deposition. Do you see that?

18 A. Yes.

19 Q. Do you remember taking a deposition in this case?

20 A. Yes, I did.

21 Q. I would ask you to go to page 38, and let me know when
22 you're there.

23 A. I'm there.

24 Q. There is a section of the deposition I would like to read
25 to you, starting on page 2. So why don't you follow along with

1 me.

2 (Reading.) Question: "Okay. When that occurred,
3 what did you learn at that time as to the phone lines that were
4 being recorded, which ones?"

5 Answer: "I learned that there were possibly 20
6 lines in the department. There was a set of recording lines
7 that was recorded of phones with, I believe -- I believe the
8 front desk was recorded, I believe 911 lines was recorded, I
9 believe there was a line in the Records that was recorded, I
10 believe both secretaries' lines were recorded, I believe Gene
11 Kyle's was recorded, and I believe there was on some demand the
12 chiefs' and maybe the division chiefs' was recorded, but it was
13 on demand only."

14 Did I read that correctly, sir?

15 **A.** Yes, you did.

16 **Q.** Now move down to line 18.

17 Question: "When you say the division chiefs' lines
18 were recorded on demand, what did you mean by that?"

19 Answer: "If you wanted your own line recorded -- if
20 you wanted your own line recorded, you could say, 'Yes, I want
21 that recorded for whatever reason,' so it might have came up to
22 you. You could ask."

23 Did I read that correctly?

24 **A.** Yes.

25 **Q.** So in your deposition, you recall that you testified that

1 it was your belief that part of the way that things had worked
2 with Fautz is that division chiefs in the Detective Bureau
3 could have their line recorded if they wanted?

4 **A.** Yes.

5 **Q.** Now, again, you're not the person with the most knowledge
6 about how physically, mechanically, how to get a line recorded,
7 right?

8 **A.** Right.

9 **Q.** You relied on your director of communications, Karen
10 DePaepe, for that, right?

11 **A.** Yes.

12 **Q.** And you learned from her what line -- about the lines; and
13 if you wanted to get a line recorded, then you just asked her
14 to do that?

15 **A.** Yes.

16 **Q.** You didn't go get a vendor yourself and arrange for that?

17 **A.** No.

18 **Q.** And you never directed her at any point to record a
19 particular officer?

20 **A.** Right, I never told her.

21 **Q.** Or a particular office?

22 **A.** No, never told her.

23 **Q.** You wanted to do what Chief Fautz had done?

24 **A.** Yes.

25 **Q.** Okay. Now, starting in March of 2010, Captain Young became

1 assigned to the Detective Bureau when you were the chief?

2 **A.** Yes.

3 **Q.** And under the Fautz approach that you wanted to follow, you
4 would agree that, when he started there, his line should not
5 have been one of those recorded?

6 **A.** I don't think, at that time, we even paid that much
7 attention to it when they were switching.

8 **Q.** I understand.

9 **A.** But I think, if he wanted his line stopped being taped, he
10 could have. I don't think he knew his line was taped.

11 **Q.** I agree with that. Let me ask my question again.

12 When he came in, in March of 2010, he took over a
13 recorded line, didn't he?

14 **A.** Yes.

15 **Q.** And that's not what the Fautz approach was, to have the
16 captain take over a recorded line; would you agree with that?

17 **A.** I don't really -- I can't, a hundred percent, agree with
18 it. It's close, but I can't, a hundred percent, agree with,
19 under the Fautz thing, that this was policy he did.

20 **Q.** Well, again --

21 **A.** Maybe I'm misunderstanding what you're trying to tell me or
22 ask me.

23 **Q.** Why don't you go to page 49, and let me know when you're at
24 page 49 of your deposition.

25 **A.** Go ahead.

1 Q. If you go down to line 7, and let me know when you're
2 there.

3 A. Yes. Go ahead.

4 Q. Question: "You would agree, would you not, that his phone
5 line" -- meaning Brian Young's -- "his phone line should not
6 have been recorded?"

7 Answer: "No."

8 Question: "No, you wouldn't agree with that?"

9 Answer: "No, I'm just saying, it was for the
10 division chiefs' phone to be recorded, division chiefs' phone
11 to be recorded."

12 A. Right.

13 Q. Did I read that correctly?

14 A. Yes.

15 Q. Then, I think, if you go to page 51, as well, line 5, and
16 let me know when you're there, Captain.

17 A. Yes.

18 Q. You're on line 5?

19 A. Yes, I am.

20 Q. Question: "Should Brian Young's phone line have been
21 recorded?"

22 Answer: "If it's our policy, the way we had it set
23 up, no, his line shouldn't have been recorded."

24 Did I read that correctly?

25 A. Yes, you did.

1 Q. Then, finally, go to page 111, and let me know when you're
2 there.

3 A. Go ahead.

4 Q. Okay. On line 11, it says, Question: "Based upon
5 paragraph -- the last paragraph of page 1 of Exhibit 1, it was
6 not the intent to tape Officer Young?"

7 Answer: "No, it wasn't the intent."

8 Question: "It was not the intent to tape -- "

9 Answer: "No."

10 Question: It was done by mistake?"

11 Answer: "Yes."

12 A. Yes.

13 Q. Okay. So that was your sworn deposition testimony?

14 A. Yes.

15 Q. And you still believe that, don't you?

16 A. Yes.

17 Q. So I guess my question is, simply, that the Fautz approach
18 that you wanted to carry on had to do with having the division
19 chiefs choose whether or not to be recorded, rather than have
20 the captain step into a recorded line?

21 A. Yes.

22 Q. Now, you learned that Brian Young had stepped into an
23 office and was using a recorded line, rather than Steve
24 Richmond as the division chief; you learned that from Karen
25 DePaepe, right?

1 **A.** Yes.

2 **Q.** She explained that there was some problem with the system?

3 **A.** Yes.

4 **Q.** And that it should have been Steve Richmond who had stepped
5 into the division chief's line under the approach by Fautz,
6 right?

7 **A.** Yes.

8 **Q.** Okay. When you learned that from Karen DePaepe, then, you
9 didn't take any steps to stop it? In other words, you didn't
10 tell Karen, "Go correct that"?

11 **A.** No, I didn't. I didn't know all the details at that time
12 on it --

13 **Q.** Okay.

14 **A.** -- so I couldn't tell her to change that line at that time.
15 She might have came into my office and said, "Here's
16 the same line. That's the line we put in."

17 I don't remember having a conversation saying,
18 "We're going to do Brian Young's phone."

19 **Q.** But it would have been around March of 2011 that she would
20 have told you about this?

21 **A.** Yes.

22 **Q.** All I'm trying to establish is, in March when she came to
23 you and informed you of that, you didn't tell her, "Well, go
24 correct the mistake"; isn't that right?

25 **A.** No, I didn't.

1 Q. And you didn't tell her to go inform Brian Young either, at
2 that time?

3 A. No.

4 Q. And you didn't go to Steve Richmond, your division chief?

5 A. I think Steve changed his line -- took the other phone and
6 reconnected his own line.

7 Q. That's not my question, sir.

8 I'm just talking about when you found out, in March,
9 Brian Young had stepped in and started working in an office
10 that was recorded and that it was a mistake, and you found that
11 out in March of 2011 when Karen DePaepe told you that, and all
12 I'm trying to establish is that you didn't then walk down the
13 hallway and have a conversation with Steve Richmond about all
14 of this when you found out in March of 2011.

15 A. No.

16 Q. Okay. And you didn't do that with Brian Young either?

17 A. No.

18 Q. Okay. Now, part of the reason you didn't do that is
19 because you learned some things that were disturbing about what
20 Karen heard; isn't that right?

21 A. No.

22 Q. Okay. But she did tell you some things that disturbed you?

23 A. Yes.

24 Q. Now, you didn't tell her to go listen to those things?

25 A. No.

1 Q. She brought them to you?

2 A. Yes.

3 Q. All right. Eventually, later in the year, in December of
4 2011, you came back to have some further conversation with her,
5 and then, at that point, you did ask her to go listen to the
6 conversations that disturbed her and to put them on cassette
7 tapes?

8 A. I told her to go back. She had called me and made a
9 statement that there was something on a tape she found that she
10 found very disturbing, and, at that time, it was based on one
11 of the tapes where there was something on it --

12 Q. Hold on.

13 A. -- that I didn't want to get that far with it.

14 Q. Hold on, Captain.

15 MR. WALTON: I just want to make sure he's aware
16 he's not to discuss the content.

17 MR. SULLIVAN: Thank you. I'll go through that
18 again.

19 Q. Do you remember, when we took the deposition, we had all
20 this conversation about --

21 A. Yeah. That's why I was slowing down here.

22 Q. I thought you were on that.

23 A. Yeah.

24 So, basically, without that, I wouldn't have asked.

25 Q. I understand. That's exactly my point.

1 **A.** Okay.

2 **Q.** It's because of that you asked her to go listen to some
3 more and to put them on cassette tapes?

4 **A.** I didn't tell her to listen to more. I told her, "Give me
5 what you have, and I will take a look at it."

6 **Q.** Okay. Now, at that time, Captain Young was not under any
7 criminal investigation by the South Bend Police Department, was
8 he?

9 **A.** No.

10 **Q.** And he was not under any warrant that you were aware of?

11 **A.** No.

12 **Q.** There was no court order, right?

13 **A.** No.

14 **Q.** And there was no Internal Affairs investigation that had
15 been opened?

16 **A.** No.

17 **Q.** In fact, there was really no law enforcement purpose that
18 had directed the recording of Brian Young; isn't that correct?

19 **A.** No.

20 **Q.** No, that's not correct?

21 **A.** There was something more that was brought to me that I
22 can't say because of what they said there.

23 **Q.** Let's do this. Go to page 66 of your deposition, and let
24 me know when you're there.

25 **A.** 66?

1 Q. Yes, sir. Are you there?

2 A. Almost.

3 Q. Okay.

4 A. Okay. Go ahead.

5 Q. Okay. Line 15, Captain.

6 Question: "Just so I'm clear, when Brian Young's
7 phone line was being recorded, he was not under any criminal
8 investigation; is that correct?"

9 Answer: "Correct."

10 "There was no court order that anyone had obtained
11 authorizing the recording of his phone line; is that correct?"

12 Answer: "That's correct."

13 Question: "There was no law enforcement purpose
14 that was being undertaken in the recording of his phone line;
15 is that correct?"

16 Answer: "Correct."

17 A. Yes.

18 Q. So my question to you is: In regard to the recording of
19 it, right, not your request to Karen DePaepe, but in the
20 recording of it, your testimony under oath in the deposition
21 was there was no lawful enforcement purpose that was being
22 undertaken in the recording of his phone line?

23 A. Right.

24 Q. I understand you were concerned about some things and
25 that's why you asked for the tapes; is that correct?

1 **A.** Right.

2 **Q.** And Karen DePaepe is not a law enforcement officer, right?

3 **A.** Right, she's not a law enforcement officer.

4 **Q.** She doesn't work for Internal Affairs?

5 **A.** No.

6 **Q.** Isn't it true that if an officer is under investigation,
7 then he has some due process rights; is that correct?

8 **A.** Yes.

9 **Q.** Now, Captain Boykins, you believe that, as chief, the
10 decision about how to handle the recording of lines rests with
11 you?

12 **A.** Yes.

13 **Q.** But you also believe that if you were going to designate
14 that someone should be recorded, you would tell that officer
15 that he's being recorded; isn't that right?

16 **A.** Yes.

17 **Q.** Because that's his right, in your view?

18 **A.** Yes.

19 **Q.** It's related to privacy, isn't it?

20 **A.** Yes.

21 **Q.** And you never made any kind of general announcement to the
22 police force about which lines were recorded; is that right?

23 **A.** No. Not general, no.

24 **Q.** Okay. So when Captain Young took the position with the
25 Detective Bureau, at that time, nobody knew he was being

1 recorded; isn't that right?

2 **A.** I don't think anybody thought about it. It was just
3 nothing that crossed their minds.

4 **Q.** It may be that no one thought about it, but my question
5 was: Nobody knew, because they assumed the recorded line had
6 been in a different office; isn't that right?

7 **A.** Yes and no. I can't answer for them. I didn't know.

8 **Q.** Well, you didn't know?

9 **A.** No.

10 **Q.** And Karen DePaepe later told you that she didn't know for a
11 time; she discovered it later?

12 **A.** Right.

13 **Q.** So if you didn't know during that time, and Karen DePaepe
14 didn't know, it was really impossible for Captain Young to know
15 that until Karen discovered it; isn't that right?

16 **A.** Yes.

17 MR. SULLIVAN: A minute, Your Honor?

18 THE COURT: Yes.

19 (Brief pause.)

20 MR. SULLIVAN: I'll pass the witness, Your Honor.

21 Thank you, Captain.

22 THE COURT: Mr. Walton.

23 CROSS-EXAMINATION

24 BY MR. WALTON:

25 **Q.** Good evening, Captain.

1 **A.** Yes.

2 **Q.** You were testifying about the reasons about which you
3 continued the recording of the lines after Chief Fautz decided,
4 with Karen and others, earlier in his command as to what lines
5 would be recorded.

6 Do you remember that?

7 **A.** Yes.

8 **Q.** And you became a division chief under Chief Fautz before
9 you became chief of police, right?

10 **A.** Yes.

11 **Q.** Were you aware your line was being recorded when you were
12 division chief?

13 **A.** No.

14 **Q.** Did you ever ask?

15 **A.** No.

16 **Q.** Were you ever told?

17 **A.** No. I found out later, but not then.

18 **Q.** All right. Did you have any expectation of a right to
19 privacy about your line being recorded or not?

20 **A.** No.

21 **Q.** Why not?

22 **A.** Because I had a cell phone, and if I wanted to make a
23 personal call, I could have made a call. If I received a call,
24 I could tell them I could call them back but not on this phone.

25 **Q.** Now, how many years have you been in the department?

1 **A.** Thirty years.

2 **Q.** And in your 30 years, was it common knowledge among the
3 officers, at least starting about the time that, let's say,
4 Chief Bennett was chief of police, that lines into the
5 department and going out of the department were being recorded?

6 **A.** There was always suspicions of lines be recorded. When we
7 worked the front desk, you had to use a pay phone back then --
8 to actually use a pay phone to make calls, so we didn't make
9 them at the desk because we felt that they were recorded.

10 **Q.** Was it common knowledge, then, among the officers that you
11 spoke to before you even got into a position of command?

12 **A.** Yes.

13 **Q.** So maybe some of you did or did not know which lines were
14 being recorded, but you could have asked, right?

15 **A.** Yes.

16 **Q.** Was there ever a time in your 30-some years in the
17 department, in your experience, if you would have asked if a
18 line was being recorded, that anyone at the department that you
19 know would have hidden that from you?

20 **A.** No.

21 **Q.** How about under Chief Fautz' time as chief; was there ever
22 a time when he was chief and you were division chief that you
23 felt, with the policies and what practices were going on at the
24 time, that if anybody wanted to know if their line was being
25 recorded, could they have asked?

1 **A.** Yes.

2 **Q.** And would they have been told?

3 **A.** Yes.

4 **Q.** Would it ever have been hidden from them?

5 **A.** No.

6 **Q.** Why not?

7 **A.** Chief Fautz was, in a way, doing what he felt he needed to,
8 to have the lines taped, and I was the same way. We were
9 always conscious about lines being taped because we even had
10 our offices cleared to just make sure that there wasn't bugs or
11 something in there, so we were always kind of paranoid about
12 being recorded or being taped.

13 **Q.** Okay. When Chief Fautz put this system in place, he had
14 indicated that he had done it for law enforcement purposes to
15 log complaints from the public about officers, to preserve
16 anonymous tips, et cetera.

17 Is that your understanding of what the purpose of
18 the recordings were?

19 **A.** Yes.

20 **Q.** And when he was chief, he also indicated that the rationale
21 for recording lines was to record conversations from the public
22 calling into 911, reporting of a crime that could potentially
23 become evidence at some point, at the front desk, the same
24 thing, and to document calls as an investigative tool and
25 documentation.

1 Was that your understanding?

2 **A.** Yes.

3 **Q.** And that was while you were a division chief, as well as
4 when he was chief of police?

5 **A.** Yes.

6 **Q.** And when you became chief, did you believe that was an
7 appropriate use of your recording system at that time?

8 **A.** Yes, but, again, I paid no attention to it. It was
9 something that just didn't hit my mind. I didn't think about
10 it.

11 **Q.** I understand. But at least you knew when the system was
12 set up, it was set up for legitimate law enforcement purposes?

13 **A.** Yes.

14 **Q.** You're not aware that the system was attempting to hide
15 anything from anybody, to harass anybody, to trick anybody?

16 **A.** No.

17 **Q.** That wasn't true when you were chief of police either?

18 **A.** No.

19 **Q.** Was the system ever designed to harass anybody in the
20 department itself?

21 **A.** No.

22 **Q.** And the entire time you were chief of police, did you
23 continue, again, with that philosophy, that the use of the
24 recording system itself was being used for legitimate law
25 enforcement purposes?

1 **A.** Yes, but, again, like I say, it was never brought up.

2 **Q.** I understand.

3 **A.** Yes.

4 **Q.** I understand it wasn't a topic of conversation.

5 **A.** Okay.

6 **Q.** Okay. And so when you recorded lines, sometimes chiefs'
7 lines were recorded, as well, at their request -- I mean,
8 captains' lines were recorded at their request, as well?

9 **A.** Yes.

10 **Q.** In fact, Rick Bishop, as captain, had his line recorded?

11 **A.** Yes.

12 **Q.** You were aware of it?

13 **A.** I am now aware of it, but, back then, I wasn't aware of it.

14 **Q.** I understand. But the purposes of recording a captain's
15 line, as opposed to a chief's line, as long as it's being done
16 for legitimate law enforcement purposes, you had no problem
17 with that?

18 **A.** If the officer knew and didn't have a problem, no, I
19 wouldn't have a problem with it.

20 **Q.** In Rick Bishop's case, it's my understanding he asked for
21 his line to be recorded from Chief Fautz; is that your
22 understanding?

23 **A.** That's my understanding.

24 **Q.** Now, you said when this thing came up with Karen, that you
25 did not go to Karen and tell her to stop recording the line of

1 Brian Young; is that right?

2 A. Right.

3 Q. That was your choice, at the time, as chief of police?

4 A. Yes.

5 Q. You knew that you had final say of what should or should
6 not be recorded?

7 A. Yes. When all of this came up, yes.

8 Q. I want to talk to you about -- there's much to have been
9 said about what Karen heard or didn't hear in February of 2011,
10 but let's talk about why she was there to begin with.

11 Were you aware that there were malfunctions in the
12 recording system in February 2011 that led Karen into the
13 system to try to determine if the lines were still doing what
14 they were supposed to be doing?

15 A. I didn't know there was a problem, but she informed me when
16 she called me down that this is where this came from.

17 Q. And would that have been in accordance with her normal
18 office duties and her responsibilities as director of
19 communications to check the lines for malfunctions?

20 A. Yes.

21 Q. Would it have been her responsibility to make sure the
22 lines that were requested to be recorded after the malfunctions
23 were still being recorded?

24 A. Yes.

25 Q. Okay. That was something she had done for years for the

1 department under your reign as chief and also for prior chiefs
2 prior to you?

3 **A.** Yes.

4 **Q.** Barb Holleman, for example, was she the person in the
5 department that somebody would go to in the ordinary course of
6 their business if they wanted to take their line with them from
7 one office to another?

8 **A.** Yes.

9 **Q.** Was she the person who did that in the ordinary course of
10 her duties in the department?

11 **A.** Yes.

12 **Q.** Now, neither Barb nor Karen were police officers; is that
13 right?

14 **A.** Yes.

15 **Q.** But they had the authority to do these things under your
16 direction and control?

17 **A.** Yes.

18 **Q.** Now, I want to talk to you about the period of March of
19 2010 to February of 2011, when Brian Young was in this office.

20 He had come in as captain of the Investigative
21 Division; is that right?

22 **A.** Yes.

23 **Q.** Was there a short delay between the time when Steve
24 Richmond came in as chief of the Investigative Division in
25 February of 2010 and when Brian Young was promoted to captain

1 of the Investigative Division?

2 **A.** There was a little time between but not that much.

3 **Q.** Okay. Maybe three or four weeks?

4 **A.** Maybe that or a little less.

5 **Q.** If the records would indicate that he came in around
6 March 22nd, 2010, would that sound about right?

7 **A.** Yes.

8 **Q.** And Steve Richmond came in around February 15th, 2010?

9 **A.** Yes.

10 **Q.** Now, when he had come into that office, he came into a new
11 office, right?

12 **A.** Yes.

13 **Q.** And he received a number that was previously being recorded
14 by the department for Rick Bishop?

15 **A.** Yes.

16 **Q.** Okay. This was a new office with a new number, correct?

17 **A.** "This," in that you're talking about Rick Bishop's phone
18 number?

19 **Q.** Yes.

20 **A.** No. It's the same number. I don't think it was changed.

21 **Q.** When he came into that office, did he ever come to you or
22 to Karen DePaepe, to your knowledge, and ask if his line was
23 being recorded since he received Rick Bishop's old number?

24 **A.** Not to my knowledge, no.

25 **Q.** Were you aware that he went into Barb Holleman and said,

1 "When I call somebody, I'm getting Rick Bishop's Caller ID
2 coming up, as if Rick Bishop is calling someone," and he wanted
3 his Caller ID changed? Were you aware of that?

4 **A.** No.

5 **Q.** All right. So during this period of time, from March 22nd,
6 2010, to the time Karen was hearing these conversations, was
7 there anything that would have ever prevented or stopped Brian
8 Young from asking if his line was being recorded?

9 **A.** No.

10 **Q.** If he had done so, would you have found out and told him?

11 **A.** I would have talked to him or found out why or whatever,
12 maybe. I'm not really sure. It would have been part of his
13 responsibility. If he didn't want his line taped, he wouldn't
14 have to have his line taped.

15 **Q.** He would have to ask, though, right?

16 **A.** Yes.

17 **Q.** So if an officer wanted his line taped, he would have to
18 ask, because you would have to bring in an outside vendor to
19 actually get that to happen, right?

20 **A.** Yes.

21 **Q.** Karen didn't know how to do it herself, from your own
22 personal knowledge, right?

23 **A.** From my own personal knowledge, no. I don't know.

24 **Q.** To your knowledge, did any outside vendors ever come in and
25 change any of the recorded lines from the time you took over as

1 chief of police from when the lines had been recorded from
2 Chief Fautz?

3 **A.** No.

4 **Q.** So whatever was being recorded under Chief Fautz continued
5 to be recorded, and no change ever occurred during your tenure?

6 **A.** No.

7 **Q.** Do you remember who came to you to discuss which lines were
8 being recorded after you took over as chief?

9 **A.** Well, it would have had to have been Barb or Karen. That
10 would have been the ones, but I don't remember when they came
11 to me.

12 **Q.** All right. Did you believe that Chief Fautz's choices to
13 record conversations were necessary and legitimate business
14 purposes for the police department?

15 **A.** Yes.

16 **Q.** And, at any time, did that philosophy change during the
17 time that you were there?

18 **A.** No.

19 **Q.** Was the recording system itself, as it was installed in
20 2004, ever used to record a conversation based on its content?

21 **A.** Not that I know of.

22 **Q.** Was the recording system itself, as was installed under
23 your command, ever used to record a conversation based on the
24 individual identity of the participants in the conversation?

25 **A.** No.

1 Q. Was the recording system, under your tenure, ever used to
2 record a conversation based on the time of day?

3 A. No.

4 Q. Was it ever used to record a conversation of blackmail or
5 intimidate a participant?

6 A. No.

7 Q. Was the system ever used to record any specific kind of
8 conversation?

9 A. No.

10 Q. Finally, was the system ever used to record a conversation
11 to spy on, embarrass, or threaten any participant?

12 A. No.

13 Q. Now, the private lines that were being recorded into the
14 individual offices, those lines could also contain information
15 that could be useful to the police development in the
16 enforcement of their duties; is that right?

17 A. Yes.

18 Q. Say a murder tip was called into one of the division
19 chiefs' offices, that would be important information?

20 A. Yes.

21 Q. And would be recorded?

22 A. Yes, if their lines were being recorded.

23 Q. In fact, division chiefs' lines were being recorded, and
24 your line as captain was being recorded, in order to ensure
25 that there was transparency to the public; in other words, if

1 there were complaints, you wanted to make sure that you had
2 documentation of what was happening?

3 **A.** Yes.

4 MR. SULLIVAN: Objection, Your Honor. I think,
5 Spence, you said his line as captain.

6 BY MR. WALTON:

7 **Q.** I'm sorry. As chief; is that right?

8 **A.** Yes, as a chief.

9 **Q.** In fact, anonymous tips, any kind of information, could
10 have come across any one of those lines to be used for law
11 enforcement purposes?

12 **A.** Yes.

13 **Q.** In your experience, did that, in fact, happen while you
14 were captain?

15 MR. SULLIVAN: You mean "chief."

16 BY MR. WALTON:

17 **Q.** Chief, I mean. Sorry.

18 **A.** I have a lot of calls come in, complaints and everything
19 else. I can't say I had a murder tip that came in on it, but I
20 would get information, from time to time, that was law
21 enforcement sensitive that was related to something that I had
22 to look into.

23 **Q.** And those conversations may or may not be used by Internal
24 Affairs to follow up on allegations of misconduct, for example?

25 **A.** True.

1 MR. WALTON: Okay. Just a second.

2 (Brief pause.)

3 BY MR. WALTON:

4 Q. With regard to the three lines that were being recorded
5 going into the Detective Bureau, would that same type of
6 information be useful for law enforcement purposes for the same
7 reason?

8 A. Yes.

9 Q. And, lastly, I think you indicated that Karen came to you,
10 I think you said, at the beginning of March of 2011 to advise
11 you of the conversation that she had overheard when she was in
12 the communications department; is that right?

13 A. Yes.

14 Q. At that point in time, did you know that Brian Young's line
15 was being recorded?

16 A. Yes.

17 Q. And, again, as chief, you chose to keep the line being
18 recorded and not order it stopped?

19 A. Yes, at that time.

20 MR. WALTON: All right. Thank you very much.

21 THE COURT: Mr. Pfeifer.

22 CROSS-EXAMINATION

23 BY MR. PFEIFER:

24 Q. Captain, I just want to see if I can clarify a couple of
25 things.

1 When you were the chief of police, and Brian Young
2 took the position of captain of the Investigative Division --

3 **A.** Right.

4 **Q.** -- it was never your intent to record his phone line,
5 correct?

6 **A.** Correct.

7 **Q.** And if it wasn't your intent to record his phone line, then
8 his phone line should not have been recorded; do you agree with
9 that?

10 **A.** I agree.

11 **Q.** And if his phone line should not have been recorded, and
12 you didn't know it was being recorded, then you would agree,
13 would you not, that Brian Young would have no way of knowing
14 that his line was being recorded? You agree with that, don't
15 you?

16 **A.** Yes. I don't know if someone might have told him or not.
17 I have no idea there.

18 **Q.** Well, the only people that would know that the phone line
19 is being recorded, under your policy, would be you and Brian
20 Young, because your policy, you told us, was you would not
21 record somebody's line without their knowledge?

22 **A.** No, but, I mean, Rick Bishop could have told somebody or a
23 lot of people could have, same way I learned my line was taped.

24 **Q.** You don't even know if Rick Bishop knew that Brian Young
25 was getting his line, do you?

1 **A.** No.

2 **Q.** So that's all speculation; would you agree with that?

3 **A.** Okay.

4 **Q.** So let me go back.

5 The first time you became aware of the fact that
6 Brian Young's line was being recorded was March of 2011,
7 correct?

8 **A.** Yes.

9 **Q.** Karen DePaepe told you?

10 **A.** Yes.

11 **Q.** And that was contrary to your policy that you had
12 established, correct?

13 **A.** Yes.

14 **Q.** And you always followed, you told us, the policy of Chief
15 Fautz, correct?

16 **A.** Correct.

17 **Q.** You didn't change his policy in any way, did you?

18 **A.** No.

19 **Q.** So your policy was, "Don't record somebody's line unless
20 you tell them," correct?

21 **A.** Yes.

22 **Q.** You didn't even follow your own policy after Karen DePaepe
23 told you Brian's line was being recorded, did you?

24 **A.** A lot of these lines, as we just got through mentioning, we
25 weren't aware of. I wasn't even aware of my own line being --

1 Q. I understand that, but when --

2 A. So as far as me telling Brian or telling Karen DePaepe, the
3 reason had to do -- the tape had to do with something else.

4 Q. No, I'm talking about March of 2011.

5 You had no idea that Brian Young's line is being
6 recorded?

7 A. Right.

8 Q. It's not supposed to be recorded, correct?

9 A. Correct.

10 Q. Brian Young was never told it's being recorded, correct?

11 A. Correct.

12 Q. He never agreed to have it recorded, correct?

13 A. Yes.

14 Q. But, yet, you learned in March of 2011 his line was being
15 recorded, correct? Karen DePaepe told you, correct?

16 A. At that time, yes.

17 Q. Now, the people that know that the line is being recorded
18 are you and Karen DePaepe, correct?

19 A. Yes.

20 Q. The policy that you have in place is you're not going to
21 record somebody's line unless you tell them, correct?

22 A. Yes.

23 Q. You never went and told Brian Young that his line was being
24 recorded?

25 A. His line was taped beforehand. I didn't change any of the

1 thing. They changed different phones.

2 **Q.** I'm talking about March of 2011, when you learned that
3 Brian Young's line was being recorded, and it was not supposed
4 to be recorded. It was in violation of your policy; Brian
5 Young didn't know it.

6 When you learned that fact --

7 **MR. WALTON:** Objection. He asked about five
8 questions there, Your Honor.

9 **THE COURT:** He probably did. He's getting to it, I
10 think.

11 **MR. PFEIFER:** I'm trying to, Your Honor.

12 **Q.** You never went and told Brian Young, "Your line is being
13 recorded," did you?

14 **A.** No.

15 **Q.** You never told Karen DePaepe, "Wait a minute. This line is
16 being recorded; it's not supposed to be recorded; Brian Young
17 doesn't know it's being recorded; stop recording it," did you?

18 **A.** No.

19 **Q.** And that's contrary to your own policy that you were
20 following and the policy of Chief Fautz that you took over for,
21 correct?

22 **A.** Correct.

23 **Q.** And you did tell us in your deposition when we were talking
24 about Brian Young's line being recorded, at page 66:

25 "There was no lawful enforcement purpose that was

1 being undertaken in the recording of his phone line; is that
2 correct?"

3 And you said, "Correct."

4 Do you see that?

5 **A.** Yes.

6 **Q.** Did I read it accurately?

7 **A.** Yes, you did.

8 **Q.** And you answered that question under oath, correct?

9 **A.** Yes.

10 **Q.** And you stand by that answer as you are here in court
11 today, correct?

12 **A.** But I was told I could not say --

13 **Q.** "Yes" or "no" --

14 **A.** -- certain things.

15 **Q.** -- do you stand by that answer as you are here in court
16 today?

17 **A.** Yes.

18 **Q.** Thank you.

19 THE COURT: You can complete your answer if you want
20 to. If you want to add anything to that answer, you can do
21 that.

22 Don't leave yet.

23 THE WITNESS: A lot of it, it's the kind of thing
24 they don't want me to discuss. But when Karen brought that
25 information to me, there was something I had to look at through

1 a pros -- well, whatever. I had to go ahead and look through
2 some things that said this was the reason for me to look
3 further, and it was, so I don't know how I can explain it
4 without going into more details on that, what made me go ahead
5 and say, "I'm going to have to look into this."

6 BY MR. PFEIFER:

7 Q. And looking into it, you never went and talked to Internal
8 Affairs, correct?

9 A. No.

10 Q. And if Internal Affairs starts an investigation on an
11 officer, due process rights allow that officer to know that the
12 investigation is going on, correct?

13 A. If I get to that point where I call an investigation, yes,
14 but I had not called an investigation. I was looking at
15 evidence that was related to whether I was going to go ahead
16 with it or not, which could have went several different ways.

17 Q. You didn't get any of this evidence that you're talking
18 about until December of 2011 when the recordings were given to
19 you by Karen DePaepe, correct?

20 A. No. That was before. That was up -- remember, if you
21 remember what I said in here, it was almost April when I first
22 got contacted by Karen referencing something she had ran
23 across.

24 Q. You said March of '11?

25 A. Well, March --

1 Q. Okay.

2 A. -- along that time there. I was aware of that. I didn't
3 move on a lot of stuff because I was still thinking about it.
4 I was kind of surprised at some of the things, so I didn't make
5 a big move at that particular point.

6 Q. So, if I understand what you're telling this judge now, is
7 for eight months or nine months you were thinking about all of
8 this?

9 A. There were a lot of things that came up on that, but it
10 would be self-explanatory if -- well, I just can't go further
11 with it.

12 MR. PFEIFER: All right. I don't have anything
13 further.

14 THE COURT: Redirect.

15 MR. SULLIVAN: Just a couple.

16 REDIRECT EXAMINATION

17 BY MR. SULLIVAN:

18 Q. Let me see if I can clear this up a little, Captain
19 Boykins.

20 The testimony that Mr. Pfeifer was asking you about,
21 on page 66, where you said there was no law enforcement purpose
22 to recording Brian Young's line -- right?

23 A. Right.

24 Q. -- that was at the beginning when it was by mistake
25 directed to his office; that's what you meant?

1 **A.** Right.

2 **Q.** Then it became for a law enforcement purpose after you
3 learned something?

4 **A.** Yes.

5 **Q.** Okay. Now, one other thing I wanted to clear up. Excuse
6 me one minute.

7 If you look at Exhibit 9 on that binder, Captain, no
8 longer the deposition now but the binder, and you go to the
9 third page, Attorney Walton asked you some questions about
10 there being -- that there were no changes from the time of
11 Fautz through you.

12 Do you remember that exchange, where you said
13 that?

14 **A.** Yes.

15 **Q.** In the microphone, sir.

16 **A.** Yes. Sorry.

17 **Q.** That's okay.

18 And, in fact, that's not completely accurate,
19 because if you look at the very last line of the third page of
20 Exhibit 9, it reads, "245-6031 Detective Bureau (was Division
21 Chief now Division Captain's line)."

22 Do you see that?

23 MR. SULLIVAN: Can we get that on, Scott?

24 THE CLERK: Yes.

25 (Courtroom monitors on.)

1 BY MR. SULLIVAN:

2 Q. Do you see right here where I'm referring to (indicating),
3 and there's a parenthetical? You can look up at the screen if
4 it's easier. Do you see what I'm referring to, sir?

5 A. Yes, "Division Chief."

6 Q. Right, "(was Division Chief now Division Captain's line."

7 Do you see that?

8 A. Yes.

9 Q. That's the only administrative phone line, on this page,
10 here on Exhibit 9, that has the explanation to it; none of the
11 others do, do they?

12 A. No.

13 Q. Because the change was -- under Fautz, the division chief
14 was using a recorded line, and the change was that, under you,
15 the division captain ended up using a recorded line, so that's
16 a change, right?

17 A. Yeah, but that wasn't done, like, I said, "I want the
18 division captain or chief." It just got messed.

19 Q. Exactly. You never directed it to Captain Young?

20 A. No.

21 Q. I just wanted to be clear about this question about a
22 change, because Karen DePaepe had to add that phrase because
23 everyone thought, or at least she thought, that 245-6031 was
24 going to office number C157 where the division chief resided,
25 right?

1 **A.** Right.

2 **Q.** That's what she thought.

3 And the change was where the recorded line ended up
4 being; that's a change from Fautz.

5 Do you agree with that?

6 **A.** Yes.

7 MR. SULLIVAN: Nothing further, Your Honor.

8 THE COURT: Recross.

9 RECROSS-EXAMINATION

10 BY MR. WALTON:

11 **Q.** Yes, Captain, I'll be short.

12 The decision to keep this line being recorded when
13 you were chief was because of what was brought to your
14 attention at that time; is that right?

15 **A.** Yes. Remember now, I've been the chief for four years,
16 four years there. This was the first incident where we had a
17 situation come up, for three or four years here. This was
18 the last year, and then this comes up because there was just
19 some misunderstanding. Somebody didn't get it, didn't change
20 it.

21 **Q.** Right. Now, to be clear, you didn't make the change so
22 that Brian Young's line was being recorded; that change
23 occurred because Chief Richmond requested Barb Holleman to take
24 his old number into that office; and then she switched the 6031
25 line into Brian Young's line office, which was a normal request

1 being made within the department at that time?

2 **A.** True.

3 MR. WALTON: Okay. Thank you.

4 MR. PFEIFER: Nothing.

5 MR. SULLIVAN: No, sir.

6 THE COURT: Is this witness excused?

7 MR. SULLIVAN: Yes.

8 THE COURT: Thank you very much.

9 How long will your next witness be?

10 MR. SULLIVAN: Your Honor, can I have about a
11 five-minute break?

12 THE COURT: What if I said "no"?

13 MR. SULLIVAN: I'd ask for three.

14 THE COURT: You can have ten.

15 MR. SULLIVAN: No, no. All I need is five,
16 Your Honor.

17 THE COURT: Okay. Yes. The Court will be in recess
18 for five minutes or so.

19 (Brief recess taken.)

20 THE COURT: You can be seated.

21 I don't have a deputy, and he has to be sworn in.

22 You need to be sworn in. I would swear you in, but
23 I don't know the dialogue.

24 I'm assuming his testimony will take more than 15
25 minutes, right?

1 MR. SULLIVAN: It will, Your Honor, yes.

2 THE COURT: Does that answer your question, more
3 than 15 minutes? Okay.

4 (The witness was duly sworn.)

5 THE COURT: You can be seated.

6 RICHARD A. BISHOP,
7 having been duly sworn, was examined, and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SULLIVAN:

10 Q. Good evening, Commander.

11 THE COURT: I'm not sure I like the way you said
12 that.

13 MR. SULLIVAN: I know.

14 Q. Would you introduce yourself to the Court and state your
15 name and spell it for the record?

16 A. Richard A. Bishop, B-i-s-h-o-p.

17 Q. What do you do for a living?

18 A. I'm a retired South Bend police officer, and I currently
19 work part time for the St. Joseph County Police Department.

20 Q. What's your rank with the St. Joseph County Police
21 Department?

22 A. Deputy.

23 Q. What do you do for the St. Joseph County Police?

24 A. I work in their Transportation Division.

25 Q. Can you give the Court your employment history of the

1 positions you've held with the South Bend Police Department?

2 **A.** I was hired as a cadet right out of high school at the age
3 of 18 in 1975.

4 In 1977, I went to the Police Academy in Plainfield,
5 Indiana. I was sworn in as a sworn officer in 1978, and I was
6 a patrolman, a corporal, a sergeant, lieutenant, captain,
7 division chief.

8 **Q.** Thank you. So all told, how many years have you been a
9 police officer?

10 **A.** Including my St. Joe County time?

11 **Q.** Yes, sir, including your St. Joe County time.

12 **A.** Since 1975, so 40 years.

13 **Q.** Now, Commander Bishop, is that your rank?

14 **A.** No, I'm retired. Deputy, Richard, or Mr. Bishop will do.

15 **Q.** All right. Mr. Bishop, we'll do that.

16 I want you to focus on the timeframe when you
17 were -- the first time when you became a captain in the
18 Investigative Division.

19 Do you recall what year that was?

20 **A.** I believe it was in '02, 2002.

21 **Q.** I'm going to actually point you to Exhibit 43, and that's
22 tab 43 in the binder in front of you, which is in evidence.
23 That is your resumé. I assume that will help you identify
24 that.

25 **A.** Okay. October of 2002, I was promoted to captain of the

1 Detective Bureau.

2 **Q.** Okay. When you became a captain assigned to the Detective
3 Bureau in October of 2002, did you receive an assigned phone
4 number at that time?

5 **A.** I'm not sure it was 2002, but it was during that time
6 period.

7 **Q.** And what number did you get?

8 **A.** I got 245-6031.

9 **Q.** And, at that time, when you were a detective, prior to
10 January 1st, 2005, so that timeframe, did you have your phone
11 line -- did you ask to have your phone line recorded by the
12 South Bend Police Department?

13 **A.** No, sir.

14 **Q.** At that time, between October '02 and January '05, what was
15 your knowledge or understanding about recorded phone lines in
16 the police department?

17 **A.** That some lines were recorded, the common numbers like the
18 front desk and communication rooms, and then some other lines
19 were recorded.

20 **Q.** Did you have any idea which ones?

21 **A.** No, sir.

22 **Q.** Had anybody ever made a general announcement about the
23 lines that were to be recorded by the officers who had assigned
24 numbers?

25 **A.** No, sir.

1 Q. So you received nothing written, right?

2 A. Correct.

3 Q. And I want to make sure I asked, to distinguish. Nothing
4 written, but I want to know if anybody ever said anything to
5 you of "Here's the lines that are recorded."

6 A. No, sir.

7 Q. Nonetheless, did you find out if any of the administrative
8 lines were recorded between '02 and '05, when you were a
9 detective in the Investigative Bureau?

10 A. No, sir.

11 Q. Eventually, in January of '05, as recorded on your resumé
12 here, Exhibit 43, you became captain in Risk Management.
13 Describe for the Court what that is.

14 A. Risk Management was a rank or position that was assigned
15 directly under the chief of police, and I oversaw Internal
16 Affairs. We were introducing a new computer program that
17 tracked officer use of force and random drug testing.

18 Q. And what did you do in terms of overseeing Internal
19 Affairs? Can you describe what your duties were for that?

20 A. Lieutenant John Collins was assigned as the Internal
21 Affairs officer, or Officer of Professional Standards was a
22 synonymous term for it, and I would assist him in
23 investigations or do the investigations if he was busy or on
24 vacation or -- we worked together.

25 Q. Okay. Who would you answer directly to?

1 **A.** Chief Tom Fautz.

2 **Q.** So is it fair to say that you were not in the Detective
3 Bureau, at that time, in the Investigative Division? You
4 didn't answer up through Gene Kyle in the Investigative
5 Division?

6 **A.** I did not.

7 **Q.** When you first became captain of Risk Management in
8 overseeing Internal Affairs in January of '05, did you at that
9 time ask to have your line wired into the Voice Logger system?

10 **A.** No, sir.

11 **Q.** Did there come a time when you did?

12 **A.** Yes, sir.

13 **Q.** Would you please describe the circumstances that led to
14 that?

15 **A.** Yes, sir.

16 We were having a problem with an individual in the
17 City who had mental problems, and he was filing complaints and
18 threatening our officers, and he would call in and would leave
19 very lengthy messages for us after hours, and sometimes he
20 would call during hours and we would deal with him.

21 **Q.** And how did that affect your thinking about recorded phone
22 lines?

23 **A.** What had happened was, like I said, he would call and leave
24 three hours of messages. The recording system would actually
25 cut him off, and he would call back and he would leave two or

1 three hours' worth of messages for Lieutenant Collins and I,
2 mainly. Sometimes I would pick up and talk to him during the
3 day, probably because I inadvertently didn't look at the phone
4 number, so there came a time when we were building a case
5 against him so that we could get some help for him and get him
6 to stop calling the police department.

7 **Q.** Did you discuss this with John Collins at all?

8 **A.** Yes, sir.

9 **Q.** Okay. Go ahead.

10 **A.** So the messages that he left me at night, I could get
11 recordings of those, but when I talked to him on a live line --

12 **Q.** Let me hold you up there.

13 Because they were on your voicemail?

14 **A.** Yes, sir.

15 **Q.** Okay. Go ahead.

16 **A.** But the conversations I had with him while I was working
17 when I answered the phone and talked to him, I could not record
18 those. So, back then, we had cassette recorders with, like,
19 suction cups on them that you tried to hook up to the head
20 piece and talk to him and record it, but it wasn't working
21 properly, so I --

22 **Q.** Again, in regard to the recorded lines, did you have any
23 discussion with Lieutenant Ross about his recorded line in
24 Internal Affairs?

25 **A.** That would be Lieutenant Collins.

1 Q. I'm sorry. Lieutenant Collins.

2 A. Yes. He advised me that his line was recorded and he could
3 obtain recordings, but I couldn't.

4 Q. So what did you do about that?

5 A. So I spoke to -- well, first, I confirmed through our
6 communications director, Karen DePaepe, because she was the
7 person that made the copies of the recordings for me, that I
8 could not get recordings of my live conversations, and I had to
9 go through my commander, which was Chief Fautz.

10 Q. I want to hold you up on that point for a second.

11 When you said you confirmed with Karen DePaepe, did
12 you go and ask Karen DePaepe whether your line was recorded at
13 that time?

14 A. Yes, sir.

15 Q. What did she say?

16 A. It was not. That's why I could not get the recordings of
17 my conversations.

18 Q. All right. So then you were saying you went to Chief of
19 Police Fautz?

20 A. I talked to Chief Fautz about having my line recorded, the
21 245-6031, and, at that time, I'm assuming he talked to Karen
22 DePaepe, and it was recorded from that time on.

23 Q. Okay. Now, January 10th, 2007, you changed positions
24 again.

25 What position did you go to then?

1 **A.** I was promoted to division chief of the Investigative
2 Division or Detective Bureau.

3 **Q.** Okay. What happened to your 245-6031 number?

4 **A.** I took that number with me. I wanted to keep that number
5 because so many people had that phone number for me, that it
6 was possible to get that phone to ring in my new office, so I
7 had that done.

8 **Q.** When you were the captain in Risk Management, physically,
9 where was your office located?

10 **A.** What we called the "West Wing." It was Chief Fautz's
11 office, division chief Darryl Boykins' office, and then my
12 office.

13 **Q.** Was that in the same wing as the Investigative Division?

14 **A.** No, sir.

15 **Q.** So you had to move from one end of the building to the
16 other?

17 **A.** Correct.

18 **Q.** But they somehow rerouted your phone line so that it
19 followed you?

20 **A.** Yes, sir.

21 **Q.** Now, at that point, were you aware that your phone line was
22 still being recorded when you moved in as division chief?

23 **A.** I just forgot about it. I should have, but I had forgotten
24 about it.

25 **Q.** Did you talk to anybody when you made that move about the

1 recorded lines in the police department?

2 **A.** No, sir.

3 **Q.** How long were you in that position as division chief?

4 **A.** Three years.

5 **Q.** In that entire time, did you remember that you had
6 originally asked for that to be recorded?

7 **A.** No, sir.

8 **Q.** So did you talk to anybody when you left the police
9 department in February of 2010 about the fact that your line
10 was being recorded?

11 **A.** No, sir.

12 **Q.** Because, as I take it, you didn't realize it yourself at
13 that point?

14 **A.** Correct.

15 **Q.** Okay. The reason you asked to have your line recorded was
16 very specific to what you were facing at the time?

17 **A.** Yes, sir.

18 **Q.** Did you ask Chief Fautz to make any kind of policy or
19 procedure in which division chiefs would henceforth always be
20 recorded?

21 **A.** No, sir.

22 **Q.** When you asked to have your phone line recorded, was it
23 your expectation that 6031 would always be recorded no matter
24 who used it?

25 **A.** No, sir.

1 Q. Did anybody tell you that that would be the case?

2 A. No, sir.

3 Q. If you had recalled that 6031 was recorded when you moved
4 to the division chief's office, would you have wanted it
5 recorded?

6 A. I probably would have asked to have it removed.

7 Q. Why?

8 A. In those positions, the higher positions, especially Chief
9 Boykins and myself, we had filed for some special clearance
10 with the federal government so that we could -- so the U.S.
11 Attorney's Office and the ATF task force and different task
12 forces could have conversations with us about certain cases
13 that was confidential information. Knowing that they would
14 call on those lines, it would probably be not good practice to
15 have someone have access to those taped lines.

16 Q. Okay. You understand that different division chiefs felt
17 differently about that. Some wanted their lines recorded, but
18 what you're saying is you would not have; is that fair?

19 A. I don't know how they felt, but I would not have wanted it.

20 Q. So you had never talked to the other division chiefs about
21 recorded lines?

22 A. No, sir.

23 Q. Okay. So if you'd look at Exhibit 46 in that binder, and
24 describe what that Exhibit 46 is.

25 A. This is a -- this is a sheet of all of the phone numbers in

1 the Investigative Division while I was assigned to the
2 Detective Bureau. Investigative Division and Detective Bureau
3 are synonymous.

4 **Q.** Based upon your resumé and in looking at Exhibit 46, can
5 you tell us what timeframe this would have captured,
6 Exhibit 46?

7 **A.** It probably would have been in 2004. The only reason I say
8 that is because Chief Fautz was the chief in the Detective
9 Bureau when I was promoted and then Division Chief Kyle became
10 the chief there.

11 **Q.** It was not, however, from January 1st, '05, through
12 January 10th, 2007, because you would not have been listed in
13 the Investigative Division at that time; is that correct?

14 **A.** That's correct. I take that back. I think Chief Kyle and
15 I were both promoted at the same time. I'm not positive on
16 that, so it would have been sometime when I was assigned to the
17 Detective Bureau.

18 **Q.** You mean Chief Fautz and you? Chief Kyle was the division
19 chief and you were a captain, according to this, which --

20 **A.** Right. What I'm saying is I don't know if it was -- it
21 could have been from '02 to '05, because I can't remember if
22 Chief Fautz and Chief Kyle and myself were all promoted at the
23 same time.

24 **Q.** I see. But there's no doubt in your mind, when you were
25 captain of Risk Management, you would not have been included in

1 a list of captains in the Investigative Division; do I
2 understand that correctly?

3 **A.** That's correct.

4 **Q.** Okay. On Exhibit 46, Gene Kyle's number ends in 5990 as
5 division chief.

6 Eventually, you became division chief, correct?

7 **A.** Correct.

8 **Q.** And you did not use that number?

9 **A.** That's correct.

10 MR. SULLIVAN: Okay. One moment, Your Honor.

11 (Brief pause.)

12 MR. SULLIVAN: Thank you, Mr. Bishop.

13 No further questions. Pass the witness.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. WALTON:

17 **Q.** Good evening, Mr. Bishop.

18 **A.** Good evening, sir.

19 **Q.** You and I have known each other for a number of years.

20 Can I call you "Rick"?

21 **A.** You sure can.

22 **Q.** All right. Rick, you indicated that you were captain in
23 the Investigative Division with number 245-6031 up until around
24 January 1, 2005, when you went to Internal Affairs?

25 **A.** I've had that same phone number, so I've had that --

1 Q. Right.

2 A. Okay.

3 Q. I'm just saying, when you were captain in the Detective
4 Bureau or the Investigative Division, you had 6031 at that
5 time?

6 A. Correct.

7 Q. During this period of time that you were captain, there was
8 a remodel going on in the department just before -- really,
9 just before your promotion in Internal Affairs?

10 A. Yes. It wasn't a promotion; it was a lateral transfer.
11 But the construction went on for several years.

12 Q. And during this period of time, do you remember your
13 Division Chief Kyle having discussions with then Chief Fautz
14 regarding the recording of telephone lines in the Detective
15 Bureau?

16 A. No, sir.

17 Q. Division Chief Kyle had not discussed that with you?

18 A. No, sir.

19 Q. Okay. Were you aware that there were meetings, in the fall
20 of 2004, trying to determine which lines should or should not
21 be recorded, that Chief Fautz had conducted?

22 A. No, sir.

23 Q. When did you learn that you were going to be transferring
24 into Internal Affairs as captain?

25 A. It would have been early -- late in '04, beginning of '05.

1 I went there January of '05.

2 **Q.** Would you have possibly learned about that during the time
3 of the remodel and the changeover of the recording system?

4 **A.** No, sir.

5 **Q.** No, all right. So there was no prior knowledge you were
6 going to be going over to that position as a lateral prior to
7 January 1 of 2005?

8 **A.** Not until Chief Fautz requested me to do it.

9 **Q.** Why did he request you to go over there?

10 **A.** It was a new position and he drafted me.

11 **Q.** All right. Do you know, at that time, whether or not he
12 made a decision to record your line before you actually went
13 over there?

14 **A.** My line was not recorded before the time that I requested
15 it.

16 **Q.** To your knowledge, right?

17 **A.** Well, it wasn't, because I asked for recordings and they
18 couldn't produce any. That's why I requested that it be
19 recorded.

20 **Q.** Okay. When you talked to John Collins when you were in the
21 Investigative Bureau, did you say his line was being recorded
22 at that time?

23 **A.** I was in Risk Management at that time, because he worked
24 under me, for me, and that's when I learned that his line was
25 recorded.

1 Q. And his rank was what, lieutenant?

2 A. He was lieutenant in Internal Affairs.

3 Q. He was lieutenant in Internal Affairs and his line was
4 being recorded by the department?

5 A. That's what he told me.

6 Q. So did it matter whether you're division chief, captain, or
7 lieutenant, at that time under Chief Fautz, whether your line
8 was being recorded or not?

9 A. I don't know what Chief Fautz's protocol was for which
10 lines were being recorded and which ones were not.

11 Q. Okay. But you were aware that it was up to the chief as to
12 what lines were being recorded; is that fair?

13 A. I did not know who made that decision.

14 Q. You never knew the whole time you were there whether or not
15 the chief of police made the decision to record lines or not?

16 A. I had no idea who made that decision to which lines were
17 recorded.

18 Q. Okay. When you decided you wanted your line recorded, you
19 went to the chief?

20 A. Yes, sir.

21 Q. Because that's who you reported to at that time?

22 A. Yes, sir.

23 Q. And the chief then directed you to Karen DePaepe?

24 A. No. I think he took my request, and then either him or his
25 secretary went to Barb and had it done.

1 Q. To Barb Holleman?

2 A. To Barb Holleman.

3 Q. So you think Barb Holleman was in charge of getting lines
4 recorded at that time?

5 MR. SULLIVAN: Objection. Mischaracterizes the
6 testimony. That's not what he said.

7 BY MR. WALTON:

8 Q. Well, who was it, from your understanding, that would
9 handle the recordings at that time under Chief Fautz?

10 A. Karen DePaepe.

11 Q. Okay. So starting at some point in 2005, then, your line
12 as captain started to be recorded?

13 A. It was -- actually, it was in 2006 when I requested it.

14 Q. You were then promoted to division chief of the
15 Investigative Division in 2007, according to your resumé,
16 right?

17 A. Yes.

18 Q. And, at that point, you asked that 6031 be moved to the
19 Investigative Bureau, and you went to Barb Holleman to do that;
20 is that right?

21 A. Correct.

22 Q. And Barb was the person responsible within the department
23 to change a person's line, so that -- you wanted to keep the
24 same line that you had?

25 A. Yes.

1 Q. And your reasons for that were?

2 A. Because in the two positions I had before, I had given my
3 number out to several people, and everybody had that number as
4 being my number, so I wanted to keep it.

5 Q. Sure. For continuity and for continued law enforcement
6 purposes, you wanted to keep that same number so that the same
7 people you were familiar with could contact you?

8 A. Yes, sir.

9 Q. And then, when you were captain, did you ever have a
10 practice of asking -- you were talking about a situation where
11 you wanted to specifically ask for certain lines that may or
12 may not have been recorded for purposes of your investigation?

13 A. No, sir.

14 Q. I thought you were talking about getting threats and so you
15 wanted to try to capture those in some way.

16 A. Right, but you used the word in the plural; it's just
17 singular. My phone is what I requested.

18 Q. I'm sorry.

19 A. Besides the front desk and the communication rooms, I knew
20 those were recorded because we made several recordings during
21 this investigation. It was my personal line in my office which
22 was not recorded.

23 Q. All right. Did you know which lines were being recorded
24 when you were captain?

25 A. No, sir.

1 Q. Did you know which phone lines in the South Bend Police
2 Department were tied into the system?

3 A. Besides the common ones that I talked about, the front desk
4 and the communication rooms and my own, I had no idea who else
5 was recorded.

6 Q. Okay. So when you were division chief, did you ask Chief
7 Fautz to record your line?

8 A. I did not.

9 Q. Did Chief Fautz tell you your line was being recorded?

10 A. No, sir.

11 Q. So at no time did Chief Fautz come to you and let you know,
12 when you became division chief, that your line was being
13 recorded?

14 A. No, sir.

15 Q. And it's your testimony that you forgot that your line was
16 being recorded as division chief?

17 A. Yes, sir.

18 Q. Was that during the entire time you were there until you
19 left in 2010?

20 A. That what?

21 Q. That your line was being recorded but you just forgot about
22 it.

23 A. Yes, sir.

24 Q. Is that because your practice had been, as you said, to use
25 your own cell phone for any personal calls that you had?

1 **A.** I did.

2 **Q.** Because you know your line was being recorded?

3 **A.** I forgot, but I should have known because it was my
4 request, but I used my cell phone for personal phone calls.

5 **Q.** Right. It became a habit, because of knowing that your
6 line had been recorded before, is that fair, that you used your
7 cell phone for personal calls?

8 **A.** I don't think it was because I was being recorded. I
9 always did that, ever since cell phones were cell phones like
10 we know it today. I always used my same number.

11 **Q.** You were aware that the recording system in the South Bend
12 Police Department was used for law enforcement purposes; is
13 that right?

14 **A.** Yes, sir.

15 **Q.** And you were also aware that you could ask for your line to
16 be recorded and talk to the chief about it, and if he agreed,
17 that you would have your line recorded?

18 **A.** Yes, sir.

19 **Q.** Was it common knowledge with other officers at the time,
20 based upon your experience, that they knew certain lines were
21 being recorded? Whether they knew which specific ones or not,
22 was it common knowledge that lines were being recorded by the
23 department?

24 **A.** I can't speak for the other officers. I can only tell you
25 what I know, which is some lines were recorded and some lines

1 were not.

2 **Q.** So from about 2006, is your testimony, I think you said, to
3 2010, when you left, your line had been continuously recorded
4 for about four years?

5 **A.** Yes, sir.

6 **Q.** When you were division chief, was it common knowledge to
7 you that other division chiefs' lines were recorded?

8 **A.** We never talked about it.

9 **Q.** May or may not have been? Other people may or may not have
10 been, though?

11 **A.** Correct.

12 **Q.** Was it a secret around there?

13 **A.** No. We just never talked about it.

14 **Q.** Okay. In your entire time that you worked with Chief
15 Fautz and then, later, you worked with Chief Boykins -- right?

16 **A.** Correct.

17 **Q.** -- if you had gone to them and asked if your line was being
18 recorded, in your experience, would they have told you whether
19 it was or wasn't?

20 **A.** If I had asked them if my line was recorded?

21 **Q.** Yes.

22 **A.** I knew it was. I don't know what would happen if I had
23 asked them.

24 **Q.** Were you ever aware, any time that you were in the position
25 of division chief, that there was any intent on the part of

1 anybody in the chief's office, Chief Boykins or Chief Fautz's
2 office, where they would try to hide that fact from any of the
3 officers in the department?

4 **A.** I don't think so.

5 **Q.** The recording of lines was used to obtain important
6 information for law enforcement purposes, correct?

7 **A.** The common ones, yes.

8 **Q.** And even the private lines could be used for that purpose,
9 right? If there was a complaint that came into you as chief of
10 the Detective Bureau or an anonymous tip that came into you,
11 that tip would have been recorded and could have been used for
12 law enforcement purposes?

13 **A.** If it was recorded, it could be used for that, yes.

14 **Q.** From time to time, were you aware that there were requests
15 made from, say, the Indiana State Police to Karen to come in
16 and look through the lines and try to find recorded evidence at
17 the department that they could use in their investigations?

18 **A.** I have no knowledge of that, sir.

19 **Q.** None?

20 **A.** None.

21 **Q.** What about the prosecutor's office; could they come in and
22 ask for information from the department, working with Karen to
23 obtain information that had been recorded on different lines?

24 **A.** To my knowledge, only if it was the common lines, like the
25 911 calls and the front desk calls.

1 Q. Did you ever sit down with Chief Fautz and go through his
2 philosophy as to why he recorded lines to begin with?

3 A. No, sir.

4 Q. Did you ever do that with Chief Boykins?

5 A. No, sir.

6 Q. Did you have an expectation or right of privacy with your
7 line that was being recorded while you were there?

8 A. I did.

9 Q. You did?

10 A. Yes, sir.

11 Q. So you felt that, if you used it for personal reasons, it
12 wouldn't be recorded, or what?

13 A. If it was recorded, I didn't think they would be listening
14 to it or use it against me or anything like that.

15 Q. All right. That didn't happen when you were there?

16 A. Did what happen?

17 Q. They never used anything that you had on your line while
18 you were there against you for any reason?

19 A. Not that I know of.

20 Q. Did it happen to any other officer that you're aware of
21 during the time that you were there up to the time you left in
22 2010 as division chief?

23 A. The only lines that I know that we used any recordings from
24 were the 911 and the front desk communication.

25 Q. All right. When you left in February of 2010, to your

1 knowledge, was 6031 still being recorded as you had originally
2 requested it would be?

3 **A.** Apparently. Otherwise, we wouldn't be here.

4 **Q.** In your deposition, to refresh your memory, you indicated,
5 "All I can remember is when I left I didn't make a request not
6 to record it anymore because I had forgotten that it was being
7 recorded."

8 Is that fair?

9 **A.** That's fair.

10 **Q.** Okay. And you were asked then, "So as far as you knew, it
11 was still being recorded?"

12 And you said, "Correct."

13 Does that sound correct?

14 **A.** Yes, sir.

15 **Q.** Okay. Then when you left, you were aware that Captain
16 Richmond was being recorded in -- was being promoted into your
17 old position?

18 **A.** Well, those are two different questions.

19 **Q.** I'm sorry. I'll start over.

20 **A.** You said something about being recorded and being promoted
21 and took my --

22 **Q.** I meant promoted.

23 When you left in 2010, you were aware that Captain
24 Richmond was being promoted into your old position?

25 **A.** Yes, sir.

1 **Q.** Did you know anything at that time about his keeping his
2 own line and 6031 going into the other office?

3 **A.** I had no knowledge of what his request was.

4 **Q.** And, I take it, you, basically, just stayed out of anything
5 that happened once you left there in February of 2010; is that
6 fair?

7 **A.** Yes.

8 **Q.** Okay.

9 **A.** As far as the phone lines were concerned.

10 **Q.** Right. At any time while you were chief of the
11 Investigative Division, do you remember ever telling anybody
12 your line was recorded?

13 **A.** No, sir.

14 **Q.** Okay. When an officer would ask that a line would be
15 recorded, was that the officer's choice?

16 **A.** It was my choice. I can't speak for the other officers.

17 **Q.** Okay. But the captain or chief could refuse that, could
18 they not?

19 **A.** I don't know, sir.

20 **Q.** In your deposition -- and I can hand it to you, Rick, or
21 show it to you --

22 MR. WALTON: Can I approach?

23 THE COURT: Yes.

24 MR. WALTON: Can I ask him from here, Judge, for
25 convenience?

1 THE COURT: Yes, so long as everybody in the room
2 can hear.

3 BY MR. WALTON:

4 Q. All right. It says, "But the captain or the chief could
5 refuse that, could they not?"

6 And your answer is, "I would believe that's his
7 choice."

8 A. Okay. I said I believed, but I had no idea what the
9 practice of the chief was or the --

10 Q. I understand.

11 Then the next question was: "In other words, the
12 ultimate decision if it's going to be recorded or not lies with
13 the chief?"

14 And you said, "I would think that's true."

15 A. Yes, sir.

16 MR. WALTON: Okay. Can I have just a couple
17 minutes, Judge?

18 THE COURT: Yes.

19 (Brief pause.)

20 BY MR. WALTON:

21 Q. When you were promoted from captain to division chief, did
22 you talk to anyone about continuing to have your line recorded?

23 A. No, sir.

24 MR. WALTON: Okay. Thank you. That's all I have.

25 THE COURT: Mr. Pfeifer?

1 MR. PFEIFER: Less than five minutes, I promise.

2 THE COURT: I hope so.

3 CROSS-EXAMINATION

4 BY MR. PFEIFER:

5 Q. Rick, I just want to establish a couple of things.

6 When you were a captain in the Investigative
7 Division, you had 6031, correct?

8 A. Correct.

9 Q. Your phone line was not recorded, correct?

10 A. It was not.

11 Q. You were then transferred or you took a lateral position to
12 Risk Management in the Internal Affairs Division or offices,
13 correct?

14 A. Actually, it was like administrative to the chief, oversaw
15 Internal Affairs.

16 Q. Okay. That was, I believe, in 2005, correct?

17 A. Correct.

18 Q. Then when you went there in 2005, you took the number 6031
19 with you, correct?

20 A. Yes, sir.

21 Q. At that time, when you first went there, the line was not
22 recorded, was it?

23 A. It was not.

24 Q. You had an issue, an isolated issue, with one particular
25 person, and that was the reason why you wanted to have the line

1 recorded, correct?

2 **A.** Yes, sir.

3 **Q.** And that was the only purpose that you wanted to have the
4 line recorded, because of that one situation with that one
5 person?

6 **A.** That's what brought it to light, why I wanted it done, and
7 I would have continued in that position because it was an
8 investigative tool for me for accuracy on threats or reports.

9 **Q.** And that took place in 2006, correct?

10 **A.** Yes, sir.

11 **Q.** So you were there about a year before you even made this
12 request of Chief Fautz?

13 **A.** Yes, sir.

14 **Q.** And then, in 2007, you went back to the Investigative
15 Division as division chief, correct?

16 **A.** Yes, sir.

17 **Q.** You asked to have the line 6031 put back into the office
18 that you were going to occupy back in the Detective Bureau,
19 correct?

20 **A.** Correct.

21 **Q.** I think you've told us you forgot about the fact that the
22 line was being recorded, correct?

23 **A.** Yes.

24 **Q.** When you then were no longer the division chief of the
25 Investigative Division, what was your next position?

1 **A.** I was a captain doing cold case investigations over at
2 Metro Homicide.
3 **Q.** Could you take the number 6031 with you?
4 **A.** No, sir, because I was in a different building.
5 **Q.** If you had been able to take 6031 with you to that other
6 building, would you have requested it?
7 **A.** I would have.
8 **Q.** Because that was the line that had become your little
9 personal line, correct?
10 **A.** Yes, sir.
11 MR. PFEIFER: Thank you.
12 THE COURT: Mr. Sullivan?
13 MR. SULLIVAN: No, sir.
14 THE COURT: Can he leave?
15 MR. SULLIVAN: Yes, sir.
16 THE COURT: Thank you very much.
17 THE WITNESS: Thank you.
18 THE COURT: We'll start tomorrow at 9:00.
19 Are we going to finish tomorrow?
20 MR. SULLIVAN: We will finish tomorrow, Your Honor.
21 THE COURT: Okay. So I can cancel my hotel
22 reservations for tomorrow night?
23 MR. SULLIVAN: You can safely cancel.
24 THE COURT: I love South Bend, but I want to go
25 home.

1 MR. SULLIVAN: I understand Hammond is calling you
2 back.

3 THE COURT: No, my bed is calling me back.
4 9:00 tomorrow morning.

5 MR. SULLIVAN: Very good.

6 THE COURT: We're adjourned for the day, and you all
7 can do what you want to do.

8 MR. SULLIVAN: Thank you, Your Honor.

9 (Proceedings adjourned at 6:20 p.m.)

10

11 CERTIFICATION

12

13 I, JOANNE M. HOFFMAN, certify that the foregoing is a
14 correct transcript from the record of proceedings in the
above-entitled matter.

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August 26, 2014

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U.S. Court Reporter
United States District Court
Northern District of Indiana
South Bend Division

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